SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 521

FRANKS BROS. COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

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Franks Bros. Co.

Case No. 1–C–1797

7–24–41	Charge filed Section 8 (1).
9–27–41	Amended charge filed Sections 8 (1), (3), (5).
3– 2–42	Complaint and notice of hearing issued.
3– 9–42	Affidavit of service of complaint and notice of hearing filed by Margaret K. MacKillop.
3–13–42	Order issued designating William Guffey, Trial Examiner.
3–16–42	Hearing opened.
3–24–42	Hearing closed.
3–25–42	All parties granted until 4–8–42 for filing briefs before the Trial Examiner.
3–27–42	Respondent's answer to complaint received.
4–30–42	Intermediate Report dated 4–29–42 received, filed and served. Order issued transferring case to the Board. Case No. C–2179. Affidavit of service filed by James B. Minor.

Case No. C–2179

5–18–42	Respondent requests permission to present oral argument.
5–23–42	Respondent requests extension of time to file exceptions to Intermediate Report.
5–25–42	All parties granted until 6–8–42 within which to file exceptions and brief.
5–28–42	Notice of hearing for oral argument issued. Affidavit of service filed by James B. Minor.
5–29–42	Union requests permission to file reply brief.
6– 3–42	Union granted until 6–16–42 to file reply brief.
6– 3–42	Stipulation providing for certain corrections in transcript of testimony entered by respondent and Board.
6– 8–42	Union exceptions to the Intermediate Report, and brief in support thereof received.
6– 9–42	Respondent's exceptions to the Intermediate Report and brief in support thereof received.

6-10-42 Union requests postponement of oral argument.

6-10-42 Notice of postponement of hearing issued. Affidavit of service filed by James B. Minor.

6-15-42 Respondent requests further postponement of oral argument.

6-16-42 Notice for the postponement of hearing issued. Affidavit of service filed by James B. Minor.

6-30-42 Oral argument held before Board Member Leiserson.

10-8-42 Decision, Findings of Fact, Conclusions of Law and Order issued. Affidavit of service filed by Robert E. Greene.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. C–2179

In the Matter of FRANKS BROS. COMPANY *and* AMALGAMATED CLOTHING WORKERS OF AMERICA (C. I. O.)

Mr. Albert J. Hoban, for the Board.

Gordon & Gordon, by *Mr. Benjamin E. Gordon*, of Boston, Mass., for the respondent.

Roewer & Reel, of Boston, Mass., and *Mr. David M. Schlossberg*, of New York City, for the Union.

Mr. Max E. Halpern, of counsel to the Board.

DECISION AND ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the First Region (Boston, Massachusetts), issued its complaint, dated March 2, 1942, against Franks Bros. Company, Lawrence, Massachusetts, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notices of hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that the respondent: (1) on or about July 21, 1941, and thereafter questioned employees concerning their union membership and activities, expressed hostility toward the Union, urged employees to vote against the Union in a consent election scheduled to be held on July 25, 1941, threatened that the respondent's plant

would close and that the employees would lose their employment if the Union won the election, and urged Guiseppe Bagliere, the father of Joseph Bagliere, one of its employees, to persuade his son to resign from the Union; (2) discharged Joseph Bagliere and Rose Pinto on August 16 and September 9, 1941, respectively, because of their union membership and activities; (3) on or about June 12, 1941, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees within an appropriate unit; and (4) by the foregoing acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent filed an answer, dated March 13, 1942, denying that it was engaged in commerce and that it had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held at Lawrence, Massachusetts, from March 16 to 24, 1942, before William F. Guffey, Jr., the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. A representative of the Union was present throughout the hearing but did not call or examine any witnesses. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the course of the hearing, the Trial Examiner made rulings on various motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On April 30, 1942, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, in which he found that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act and recommended that the respondent cease and desist therefrom and take certain affirmative action deemed necessary to effectuate the policies of the Act. The Trial Examiner further recommended that the complaint be dismissed insofar as it alleged that the respondent had engaged in unfair labor practices within the meaning of Section 8 (3) of the Act. On June 8, 1942, the Union filed exceptions to that portion of the Intermediate Report finding no violations of Section 8 (3) of the Act; the exceptions were accompanied by a support-

ing "Memorandum." On June 8, 1942, the respondent filed exceptions to the Intermediate Report and a brief.

Pursuant to notice duly served upon all the parties, a hearing for the purpose of oral argument was held before the Board at Washington, D. C., on June 30, 1942. The respondent and the Union were represented by counsel and presented oral argument. The Board has considered the exceptions to the Intermediate Report and the memorandum and brief and insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

Franks Bros. Company is a Massachusetts corporation having its principal office and place of business at Lawrence, Massachusetts, where it is engaged in the manufacture, sale, and distribution of men's suits, overcoats, and topcoats. The principal raw materials used by the respondent in the manufacture of its finished products consist of woolens, worsteds, rayon, and "miscellaneous findings." During the year 1941 the respondent used $125,000 worth of woolens and worsteds, $18,000 worth of rayon, and $7,000 worth of "miscellaneous findings." Of these amounts, approximately 22 percent of the woolens and worsteds, 50 percent of the rayon, and 45 percent of the "miscellaneous findings," were shipped to the respondent from points outside the Commonwealth of Massachusetts. The finished products manufactured by the respondent during this period were valued at approximately $200,000.[1]

In addition to the above-described operations, the respondent manufactures men's clothing from woolens and worsteds owned and supplied by Samson-Crane Co. and Richards Clothes Co.[2] These materials are purchased,

[1] These finished products are apparently sold and distributed by the respondent through the retail store it owns and operates in connection with its plant at Lawrence. It does not appear whether any of these finished products were shipped to points outside Massachusetts.

[2] The respondent, Samson-Crane Co., and Richards Clothes Co. are closely held companies, the ownership and operation of which are interrelated. Samuel Franks, is president, treasurer, and the principal stockholder of the respondent. His son, Abraham A. Franks, is

received, and stored by the respective owners thereof and maintain their separate identity during the process of manufacture. When the clothing is manufactured from such materials, it is turned over by the respondent at the Lawrence plant to these companies which ship it without further processing to their respective retail stores located in Maine, New Hampshire, and Massachusetts. During the year 1941 Samson-Crane Co. sold at retail approximately $480,000 worth of garments. Of this amount, the respondent manufactured 11,000 or 12,000 garments, approximately 20 percent of which Samson-Crane Co. shipped to and sold at its retail stores located outside Massachusetts. During the same year Richards Clothes Co. sold at retail approximately 2,000 garments valued at approximately $40,000. Of this amount the respondent manufactured approximately 700 garments, almost all of which were sold by Richards Clothes Co. at its retail store at Lewiston, Maine.

II. THE ORGANIZATION INVOLVED

Amalgamated Clothing Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Chronology of events*

The Union began organizing the respondent's employees in January 1941, and by the early part of June, a majority of the employees had applied for membership. On June 12, 1941, Frank Lerman, assistant manager of the Union's Boston Joint Board, met with Samuel Franks and Abraham Franks, the respondent's president and secretary, respectively, at their office in Lawrence, Massachusetts. It appears that Lerman was acquainted with the Franks, having manufactured clothing for them some years previously. After some discussion of "old times,"

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secretary of the respondent, treasurer and sole stockholder of Samson-Crane Co., and secretary of Richards Clothes Co. Another son, Harry Franks, is sole stockholder of Richards Clothes Co. All these companies now have their principal offices and places of business at the same address in Lawrence, Massachusetts.

Lerman stated that the employees were signing membership cards and requested the respondent to negotiate an agreement with the Union, pointing out during the discussion various advantages that the respondent would derive by virtue of such a contract. The parties discussed such matters as the union label, wages, the Union's rating of employers in the trade on the basis of labor costs, and the efficiency of dealing with the Union rather than with individual employees. In the course of the discussion, Abraham Franks inquired whether the Union had a majority. There is conflict in the testimony concerning Lerman's reply to this inquiry. In answer to a direct question by the Trial Examiner, Lerman testified that he told the respondent at the first conference that the Union represented a majority.[3] Samuel and Abraham Franks each gave a different version of Lerman's response to their inquiry. Samuel Franks first testified that Lerman stated "I don't think so; I don't know." Thereafter on several occasions Samuel Franks testified that Lerman had said that, "he (Lerman) hasn't got a majority," thereby not only contradicting his own previous testimony but also that of Abraham Franks, who repeatedly asserted that Lerman's reply was that "he did not know" whether the Union had a majority.[4] It is clear, however, that there was no further discussion of the matter of majority and that the respondent neither requested an examination of the cards nor inquired as to the number of employees who had signed cards. Moreover, it appears that further discussion was foreclosed, when Abraham Franks indicated that the respondent was not prepared to deal with the Union at that time, stating, according to Lerman, that "the best thing would be to leave them alone and give them time up to Christmas as he don't know what he will do with his business at the present time, and after Christmas he would talk to" the Union.

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[3] Lerman testified that at the time of the first conference, he knew the Union had a majority, that Louis Hascall, general organizer of the Union, had so advised him, that he had been informed by Hascall that approximately 50 cards had been signed, and that at the first conference Abraham Franks had stated that the respondent had 75 employees.

[4] An apparent contradiction in Abraham Franks' testimony similar to that of his father, was corrected by stipulation entered into by the parties subsequent to the hearing, and hereby made a part of the record in the case. However, Abraham Franks did contradict himself when, in answer to a question as to when he learned that the Union represented a majority, he testified that the matter of the Union's majority was never discussed prior to the conference at the Regional Office on July 8.

When Abraham Franks informed Lerman that he expected to be in Boston, where the Union's office was located, within the following week, Lerman suggested, and the respondent agreed, that they meet at such time and confer further on the matter.

Within the next week Lerman met with Abraham Franks in Boston and again requested that an agreement be entered into between the Union and the respondent. Abraham Franks admitted at the hearing that he refused at that time to enter into any agreement, and told Lerman that he "would discuss [the matter] again with [his] father and if there was any change in the situation, [he] would get in touch with" [Lerman]." According to Lerman's testimony, Franks repeated his suggestion that the Union "leave him alone until Christmas because he don't know what he is going to do with his business," and Lerman replied that the matter could not be delayed until Christmas, and that if the parties could not "come together," the Union would request the Board to certify the Union as majority representative.[5] Again, in response to a question asked him by the Trial Examiner, Lerman testified that he told the respondent at the second conference that the Union had a majority and on cross-examination he further testified that Abraham Franks asked him, "Are you sure you are going to win the election?" and that Lerman replied, "I have a majority of the cards." Lerman further testified, and Abraham Franks did not deny, that Franks stated, "Well, if you are so sure about it, why don't you call another strike?"[6] The second conference was concluded with Franks' remark that the respondent's position was still the same, that unless he informed Lerman to the contrary after discussing the matter with his father, the respondent would not then bargain with the Union, and with Lerman's reply that unless he heard from the respondent, the Union would resort to the Board's election procedure.

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[5] Abraham Franks testified that at the second conference there was no discussion about Christmas. He did not deny, nor did his father, that he insisted at the first conference, that the matter be delayed by the Union until after Christmas. Hascall corroborated Lerman's testimony on this point, by testifying that shortly after Lerman's second conference with the respondent, Lerman reported that the respondent had requested that negotiations be held in abeyance until after Christmas.

[6] It is undenied that a strike had been called against the respondent some time prior to 1941. Samuel Franks admitted that fact, although he was unable to recall when it had occurred. We agree with the finding of the Trial Examiner that Abraham Franks made the statement referred to in the text, as testified to by Lerman.

On June 19, 1941, the Union filed a petition for an investigation and certification of representatives. Subsequent thereto and after conferences at the Regional Office in which counsel for the respondent and representatives of the Union and the Board participated, an agreement was entered into for a consent election, which was signed by the Union on July 3, and by the respondent on July 14, 1941. Although the Union had demanded that the election be held prior to the beginning of the usual vacation period, during which time the plant is customarily shut down, the Union waived its demand, and it was finally agreed that the election be held on July 25, provided that notices of the election would be posted immediately.[7]

Sam Radie, an operator in the coat department, testified that after the election notices had been posted in the plant, Friedman, foreman of the coat department, stated to Radie that he believed that "the shop would close if the Union got into the factory," and that "if the union won the election the place would be shut down, the work would be made up in another shop." Souren Perperian, employed in the same department, testified that prior to a union meeting on July 23, Friedman made similar anti-union remarks to him.[8] Friedman claimed that he had received instructions from the respondent to refrain from discussing the Union with any of the employees, although he was not clear as to whether he received such instructions "a week or a week and a half" prior to the scheduled election or "a week or two" prior to the posting of the election notices. He specifically denied that he had ever spoken to any of the employees about the union meeting, the scheduled election, or any other union matters, or that he had heard any rumors about the Union after receiving these instructions. However, he admitted that employees asked him questions about the Union and that they had told him of the rumor that "in case it was a union shop the factory would be closed." The Trial Examiner, who observed the demeanor of the witnesses and heard their testimony, credited the testimony of Radie and Perperian. In view of the Trial Examiner's finding and of the incon-

[7] According to the respondent, notices were posted immediately upon receipt thereof, on July 16, 1941. The Union claims, however, that they were not posted until on or about July 20, after complaint had been made that they had not been posted.

[8] At the conclusion of the Union's meeting on July 23, Radie and Perperian signed statements, which were introduced into evidence, that Friedman had made substantially these remarks.

sistencies in Friedman's testimony as to whether he had spoken to any of the employees, or had heard rumors on any matters concerning the Union, we find that Friedman made the statements attributed to him by Radie and Perperian.

On July 23, between 25 and 40 of the respondent's employees attended a meeting conducted by the Union at its hall in Lawrence. At this meeting several of the employees stated that a number of the respondent's supervisors had declared that if the Union were successful in the scheduled election, the respondent would immediately close the plant. During the meeting a majority of those present voted to have the scheduled election postponed. Only July 24, the Union withdrew its petition for certification and the Regional Director thereupon notified the respondent that the election was canceled.*

According to the testimony of Peter Naffah, and Joseph Bagliere, on July 24, 1941, the day after the union meeting, Harry Yosper, their foreman, stated that "if the Union got in that the shop would be closed," and that "Mr. Abraham Franks there would take the contract away, thereby there wouldn't be any work and they would close up the shop."[10] Rose Pinto testified that on the morning of July 25, Yosper approached a group of his employees, including herself, Victoria Rizkallah, and several others, and addressing Pinto with the remark that there was "a union leader" in the shop, stated that, "if the union got in the doors would be closed Friday night." Rizkallah corroborated this testimony and further testified that, on several occasions prior to July 25, Yosper had expressed to her his opposition to unions, stating that "he didn't believe in it," that Minnie Yosper, his wife, "didn't think much of the Union," that she "had joined a union when she was quite young and she didn't see any benefit in it," and that on several occasions he had attempted to change Rizkallah's mind about the Union and to influence the employees against unions. Foreman Yosper admitted that he had had a conversation with Naffah and Bagliere on July 24 and had stated that "if the union

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* As stated hereinafter, upon withdrawing its petition the Union filed charges alleging that the respondent had engaged in unfair labor practices.

[10] On cross-examination, when asked what contract he referred to, Naffah testified that "they (respondent) were doing business there under contract, that Franks Brothers were producing and Samson-Crane Co. was distributing the work."

comes in here they might close up the shop." His attempted explanation of this statement was that he meant "his shop," that is, the pants department which he operated for the respondent on a contract basis, and that he "too would be out of a job." He admitted also that on July 25, in addressing a group of employees he had remarked jestingly, "I didn't know we had union leaders here." He denied only that he had made the specific statements that if the Union won the election Abraham Franks would take the Samson-Crane business away and that he stated to Pinto that the shop would close that Friday night if the Union won the election. In the light of his admissions and his unpersuasive explanation, his partial denials lack credence and we concur with the finding of the Trial Examiner that Yosper made the statements attributed to him by the foregoing witnesses.

Naffah, Bagliere, Pinto, and Rizkallah each testified that Minnie Yosper, the wife of Harry Yosper, and likewise a supervisory employee, questioned various employees on July 24 as to whether they had joined the Union or had attended the union meeting. On the morning of this day she greeted Peter Naffah as a union member, told him "she had her own way" of knowing who the union members were, and also named Joseph Baliere, Rose Pinto, Rose Yazbek, and Victoria Rizkallah as union members. Although Minnie Yosper specifically denied that she had questioned these employees concerning their union membership and activity, she admitted that she had conversed with them individually on the day in question about matters concerning the Union. She testified that the subject was first mentioned by Victoria Rizkallah, that she did not then know about the meeting, expressed surprise when she was informed concerning it, and only inquired whether "they [had] a nice time." The Trial Examiner who observed these witnesses found that Minnie Yosper's partial denials were lacking in credibility. We concur in the finding of the Trial Examiner that Minnie Yosper made the statements attributed to her by these witnesses. Peter Naffah also testified as to an incident which occurred some time after the date of the scheduled election when he had dinner with Mrs. Yosper. Another employee, Anna Fichera, was also present and joined in the conversation between Mrs. Yosper and Naffah concerning union matters. Naffah testified that Mrs. Yosper became angry when Guy Salerno, a

union organizer, came into the restaurant, and spoke to him, and that she exclaimed, "I don't care what anyone says, if the Union does get in I will state right out here now that the shop will be closed." Mrs. Yosper recalled the incident but claimed that it occurred "a week or ten days before the election," which would make it prior to the conversation she had had with Naffah and the other employees on July 24, as mentioned above, thereby contradicting her assertion that except for this latter conversation, she had never discussed the Union with any of the employees. She also denied that she made the statement as recounted by Naffah, but the Trial Examiner, who observed the witnesses, did not credit her denial. Upon the basis of the Trial Examiner's findings and the patent inconsistencies in Mrs. Yosper's testimony, we find, as did the Trial Examiner, that Mrs. Yosper made the above-mentioned statement and engaged in the above-described conduct.

Upon withdrawing from the election on July 24, the Union filed charges with the Board alleging interference by the respondent in the scheduled election. During the months of July, August, and September, various conferences were held and correspondence exchanged between the respondent and the Board, in an effort to adjust the dispute.[11] The respondent refused to post notices containing a statement that "the Company hereby advises its employees that there will be no shut-down of the plant caused by employees selecting a Union." The respondent would consent to the posting of notices containing a somewhat similar statement that "the operations of the factory will in no event be effected by the results of the election," only if a further statement were included to the effect that "if the Union wins the election and makes excessive demands on the Company, the Company may cease operations, and close the plant." Significantly, the respondent admitted at the hearing that it had no reason to believe

[11] The evidence concerning these conferences was introduced by the Board without objection by the respondent and the correspondence, constituting Respondent's Exhibits Nos. 14, 14A, 15, 16, 17A, 18A and B, and 19, was introduced by the respondent itself together with testimony concerning the same. Ordinarily evidence of offers of settlement or compromise are inadmissible in a litigated proceeding to establish the guilt or liability of a party litigant. (See Wigmore on Evidence (2nd ed.) Secs. 1061 and 1062, and cases therein cited; *West* v. *Smith*, 101 U. S. 263, page 273.) In the instant case, this rule is inapplicable because of the introduction of the pertinent evidence by the respondent itself or without its objection.

that the Union would make excessive demands, that its business was in a sound state, and that no discontinuance of its operations was otherwise contemplated.

B. *The refusal to bargain collectively; interference, restraint and coercion*

1. The appropriate unit

The complaint alleges and the answer admits that all production and maintenance employees of the respondent employed at its plant in Lawrence, Massachusetts, excluding executives, supervisors, and clerical employees, constitute an appropriate bargaining unit.[12] Some dispute exists, however, as to whether certain employees are engaged in production and maintenance work.

The respondent admits, and we find, as did the Trial Examiner, that Jacob Friedman and Harry Yosper are high ranking supervisory officials. Friedman has complete charge of the respondent's coat department, with power to hire and discharge employees, and Harry Yosper has complete charge of the pants department with power to hire and discharge employees. The respondent contends, however, that Minnie Yosper, the wife of Foreman Yosper, is an ordinary employee without supervisory status. This contention is without merit. While Mrs. Yosper works on a machine part of the time, she also helps Foreman Yosper "on the floor" and is listed on the respondent's pay roll as a "floor girl." She sometimes interviews applicants for employment and occasionally puts them to work before they have been interviewed by Foreman Yosper; she instructs employees of the pants department concerning the manner in which their work should be done; she sometimes notifies employees of wage increases, and on one occasion told an employee that she was the person to see for wage increases because she "controlled the money"; she keeps the time-card records of the pants department employees and assists Foreman Yosper in computing the earnings of these employees. While Minnie Yosper claimed that she had no authority to discharge employees, it appears from the record that her work and duties were primarily to aid and assist her husband in the control and

[12] The petition for investigation and certification filed by the Union also requested, and the consent election agreement provided for a similar unit.

supervision of the pants department and that she was one of those who received instructions from the respondent not to discuss union matters with any of the employees. It is clear, therefore, that Minnie Yosper is a supervisory employee and as such should be excluded from the unit.

The respondent contends that Sam Perperian [13] is a supervisory employee. Perperian is in charge of the respondent's cutting department. He is a working foreman and does some cutting for which he is paid a piece-work rate. In addition, he is paid a flat sum for the time he spends supervising the four or five other cutters. He has power to recommend the hire and discharge of employees. We find, as did the Trial Examiner, that Sam Perperian is a supervisory employee and that he should be excluded from the appropriate unit.

The respondent contends that George Bialek [14] should be excluded since he is a janitor and a part-time employee. Bialek divides his time between the respondent's factory and retail store. He sweeps the floors of the factory and store, washes windows, and does other cleaning. In the store he also makes up bundles of clothing to be delivered to customers. In the factory he sponges all cloth shipped to the respondent in order to shrink it for manufacture into garments and inspects and cleans the boilers which supply the heat for the factory and the high-pressure boilers which are used in connection with the operation of the pressing machines. Although Bialek is carried on the pay roll of the retail store, by stipulation his name was added to the factory pay roll introduced into evidence. Moreover, approximately half of his time is spent in connection with the production and maintenance of the factory. Accordingly, we find, as did the Trial Examiner, that George Bialek is a production and maintenance employee and that he should be included within the appropriate unit.

The respondent contends that Anna Darwesh and Michael Weshonko are not supervisory employees. Darwesh is employed in the respondent's coat department and is classified on the pay roll as a "floor girl." According to her own testimony, she operates a machine "only once in a great while" and then only "for a short time." When a garment is completed, Darwesh inspects it and if there are

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[13] Also referred to in the record as Shemovan Perperian.
[14] Also referred to in the record as Wojciech Bialek.

any defects, she either returns the garment to the employee who did the work, or she corrects the defects herself and tells the employee to improve the quality of her work. If an employee of the coat department repeatedly makes flagrant errors and causes Darwesh "too much trouble," she reports the matter either to Foreman Friedman or to Abraham Franks, the respondent's secretary and plant manager. Darwesh consults with Foreman Friedman with respect to whether new employees will become proficient, and whether those who are unsatisfactory should be retained or dismissed. In addition, she performs Friedman's duties when he is absent from the plant. We find, as did the Trial Examiner, that Anna Darwesh is a supervisory employee and that she should be excluded from the unit. Weshonko is listed on the respondent's pay roll as a "presser." No evidence was introduced as to his duties or the nature of his employment and there is no testimony in the record from which it would appear that he is a supervisory employee. Upon this state of the record, we agree with the Trial Examiner that Weshonko should be included.

The respondent contends that Ruth Kiesling Lanouette, a timekeeper and bookkeeper in the respondent's office, should be included in the unit. Lanouette works in an office by herself. She takes care of the time-clock cards and the piece-work records. She computes the earnings of the piece-work employees and makes up the weekly pay-roll vouchers. We find, as did the Trial Examiner, that Lanouette is a clerical employee and that she should be excluded from the appropriate unit.

The respondent contends that John Boehm should also be included. Boehm was a shipping and receiving clerk for the respondent on the dates material herein.[15] His work consisted chiefly of assembling men's suits, which he then turned over to the Samson-Crane Co.'s shipper, noting in a record book the pertinent information concerning the transaction. Although at times Boehm received materials delivered to the respondent, he rarely signed receipts for them. Boehm also folded cloth after it had been shrunk. We find, as did the Trial Examiner, that Boehm was neither a supervisory nor a clerical employee, that his work was closely related to the regular production activities of the plant, that his interests were

[15] Boehm has been in the employ of Samson-Crane Co. since January 2, 1942.

the same as those of the other production and maintenance employees, and that he should be included within the appropriate unit.

We find that all production and maintenance employees of the respondent employed at its plant in Lawrence, Massachusetts, excluding executives, supervisors, and clerical employees, at all times material herein constituted, and that they now constitute, a unit appropriate for the purposes of collective bargaining, and that said unit insures to employees of respondent the full benefit of their right to self-organization and to collective bargaining, and otherwise effectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

There were introduced into evidence 46 [16] application-for-membership cards designating the Union as bargaining representative, of which 41 are dated prior to June 12, 1941, and 5 are undated. The undisputed testimony of Guy Salerno, a union organizer, establishes that all but 1 of these cards were signed by the employees in his presence prior to June 9, 1941. Salerno also testified, without contradiction, that the remaining card was delivered to him by another union organizer, who was not available to testify at the hearing, and that it then bore the apparently genuine signature of Rose Blake, whose name appears on the respondent's pay roll of June 12, 1941. The respondent did not question the authenticity of the signatures on any of the applications. Pay-roll records of the respondent, introduced by counsel for the Board, indicate that there were 80 employees within the appropriate unit as of June 12, 1941.[17]

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[16] A dispute arose at the hearing as to whether 3 employees who have been inducted into military service should be included in computing the Union's majority. All 3 were production employees; 2 were inducted subsequent to June 12, 1941; of these 2 employees, one was a member of the Union, the other was not. The third, John Arzoomanian, also referred to as John Azoonian, was a member of the Union and was inducted prior to June 12, 1942. It is clear that the 2 employees who were actively employed on June 12, 1942, should be included in determining the number of employees in the unit as of that date. It is unnecessary to resolve the dispute as to Arzoomanian, since in any event disposition of his case will not affect the Union's majority. Accordingly, Arzoomanian's union card is not included in the above figure of 46, nor is he included in the pay roll figure of 80, found below.

[17] The foregoing pay-roll records, which include weekly pay-roll data for the months of June and July 1941, list 94 employees, and

The respondent contends, however, that the employees did not intend to, nor did they in fact, designate the Union as their bargaining representative, since many of the application cards designate the "Boston Joint Board" as bargaining representative. The majority of the cards recite that the "Amalgamated Clothing Workers of America" is designated as sole bargaining agent. The remainder of the cards designate the "Boston Joint Board of the Amalgamated Clothing Workers of America" as representative. The record establishes the interrelationship of the various locals, the Boston Joint Board, and the National Executive Office of the Union [18] and it is clear that employees in signing either type of membership card were aware that they were applying for membership in the Union.[19]

The respondent urges further that the reasonable inference to be drawn from the testimony of several Board witnesses to the effect that it was explained to them that an election by secret ballot would be held before a bargaining representative would be designated, is that the employees in signing cards were led to understand that they would be afforded an opportunity to vote for their representative by secret ballot. There is no evidence in the record establishing the number of employees to whom this statement was made, and there is no proof that any employee was induced to sign a card upon any such representation. Significantly, the application for membership cards, which clearly designate the Union as bargaining representative, were all signed prior to the date of the

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the above total is computed by deducting from this number, 7 employees found to be supervisory or clerical employees, i. e., Harry Yosper, Minnie Yosper, Sam Perperian, Luke Krikorian, Jacob Friedman, Anna Darwesh, and Ruth Kiesling Lanouette; 5 employees who were employed subsequent to the week ending June 12, 1941, i. e., Wave Cram, Olive Clark, Rose Hatem, Mary Zazzo, and Theo Proulx; and 2 employees who were not employed subsequent to the week ending June 5, 1941, i. e., Joseph Tarallo and Elio Melucci.

[18] The Boston Joint Board consists of representatives of some 13 locals of the Union in Boston and vicinity; the National Executive Office consists of representatives of the various Joint Boards throughout the United States.

[19] *N. L. R. B.* v. *Chicago Apparatus Company*, 116 F. (2d) 753 (C. C. A. 7), enf'g *Matter of Chicago Apparatus Company* and *Federation of Architects, Engineers, Chemists and Technicians, Local 107*, 12 N. L. R. B. 1002; *Matter of A. Sartorius & Co., Inc.* and *United Mine Workers of America, District #50, Local 12090*, 40 N. L. R. B. 107; *Matter of Northwestern Cabinet Company* and *Furniture Workers Local Union No. 1860 of the Upholsterers' International Union of North America, etc.*, 38 N. L. R. B. 357.

respondent's initial refusal to bargain, when its attitude with respect to bargaining negotiations was not known. We are convinced that the respondent's contention is without merit and we find that the employees intended to and did designate the Union as their bargaining representative.

We find that on June 12, 1941, and at all times thereafter the Union was the duly designated representative of a majority of the employees in an appropriate bargaining unit, and that pursuant to Section 9 (a) of the Act, it was the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. Conclusions as to the refusal to bargain and the interference, restraint, and coercion

On the basis of the facts, stated and found above, we are satisfied and find, as did the Trial Examiner, that the Union on June 12, 1941, and on or shortly prior to June 19, 1941, informed the respondent that the Union represented a majority of the employees, and requested the respondent to enter upon bargaining negotiations with it. We are also convinced, and concur in the finding of the Trial Examiner, that the respondent on those occasions endeavored to delay all negotiations for a period of 6 months, and that on the occasion of the second conference, it refused to enter into an agreement with the Union and suggested instead that the Union demonstrate its strength by resort to a strike. The respondent's attitude foreclosed any possibility of a continuance of negotiations and constituted a complete repudiation of the collective bargaining process. The proposal of strike, insinuated by the respondent, was an unprovoked invitation that the Union pursue the very action which it sought to avoid and which the Act is designed to prevent.

The respondent at no time during the conferences demanded that the Union present proof in support of its majority claim. Despite its inquiry as to whether or not the Union had a majority, it permitted the matter to rest there and refused to negotiate, without any explanation that its refusal to proceed arose out of a reasonable doubt as to the Union's majority status. We concur in the conclusion of the Trial Examiner that the respondent attempted to delay negotiation for an unreasonably long

period, suggested a strike as a substitute for bargaining negotiations, and flatly refused at the outset to enter into any agreement with the Union, without discussion of proposed terms and without so much as knowing or even inquiring into the nature and extent of the Union's demands. Under these circumstances it is evident that the respondent's contention that it failed to demand proof of majority solely because it was not, as it contends, expressly apprised of the Union's claim, is pure afterthought.

The respondent's conduct thereafter lends support to this conclusion. When, having been unsuccessful in attempts to delay negotiations and the Union having filed a petition for certification, the respondent entered into an agreement for a consent election, it began an immediate campaign to undermine the Union's strength. Thus Friedman, Harry Yosper, and Minnie Yosper, all supervisory employees, informed employees on numerous occasions that if the Union were selected as representative at the election, the plant would be closed.[20] That this campaign was authorized by the respondent is evidenced by the respondent's subsequent refusal to post notices in the plant for the purpose of dissipating the effects of these threats. It is reasonable to infer that the respondent would not have engaged in such activities unless it was convinced that the union would be selected as representative at the election. In any event, these activities further indicate that the respondent was determined to prevent organization and that it was acting in bad faith in refusing to bargain with the Union. Since the conduct of the respondent's supervisory employees was directed delib-

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[20] The respondent contends that prior to the date of the scheduled election it orally instructed its supervisory employees not to discuss union matters with the other employees or to interfere in any way with the employees' self-organization. While Harry and Minnie Yosper and Friedman all testified that they had received such instructions, there was considerable difference between the dates upon which the instructions were given to each of them, their testimony indicating that the instructions were received from 1 week to 2 months prior to the date of the scheduled election. Whether or not such instructions were given is wholly immaterial. The respondent took no effective means to inform the employees that the supervisors, in making antiunion statements, were not speaking on behalf of the respondent. Moreover, the facts set forth above demonstrate that even if the claimed instructions were issued, they were not complied with. We find, as did the Trial Examiner, that the respondent is responsible for the conduct of its supervisory employees under the circumstances here disclosed. *H. J. Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514; *Swift & Company* v. *N. L. R. B.*, 106 F. (2d) 87 (C. C. A. 10); *Titan Metal Manufacturing Company, et al.* v. *N. L. R. B.*, 106 F (2d) 254 (C. C. A. 3), cert. den., 308 U. S. 615.

erately towards discrediting the Union and attacking its majority status upon the eve of the scheduled election, the Union was fully warranted in withdrawing from the consent election agreement and proving its majority by the alternative method which the Act provides, i. e., by instituting charges that the respondent had refused to bargain collectively.[21]

We find, as did the Trial Examiner, that the respondent, on June 12, 1941, and thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, in respect to rates of pay, wages, hours of employment, and other conditions of employment.

We further find that by its entire course of conduct, including its refusal to bargain and the antiunion statements and activities of Harry and Minnie Yosper and Jacob Friedman, the questioning of employees as to their union membership and activity, and the threat of a plant shut-down if the Union won the election, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We concur in the finding of the Trial Examiner, that the evidence does not support the allegation of the complaint that on or about August 1, 1941, the respondent urged Guisseppe Bagliere, the father of Joseph Bagliere, to persuade Joseph Bagliere to resign from the Union and cease his participation in union activity.

C. The alleged discriminatory discharges

1. Joseph Bagliere

The complaint alleges that the respondent discharged Joseph Bagliere on August 16, 1941, because of his union membership and activity. The Trial Examiner found that the evidence failed to support this allegation of the complaint, and concluded that Bagliere voluntarily quit his employment. The Union filed exceptions to these findings. In a memorandum in support of its exceptions, the Union conceded the correctness of the finding of the Trial Examiner that Bagliere had not been discharged, but contended that he was forced to leave his job because of his transfer from an hourly to a piece-work

[21] Cf. *N. L. R. B.* v. *Chicago Apparatus Company*, *supra*.

rate. Finally, at oral argument the Union's position was that Bagliere was either discharged for union activity or if not actually discharged, he was "goaded into quitting" on account of his union activity.[22]

According to his own testimony, Bagliere had worked for the respondent "off and on" for some 5 or 6 years prior to August 16, 1941. On one occasion he voluntarily left his employment with the respondent to go into business; he left a second time because of illness. He was last employed to take the place of an employee who had enlisted in the Army, and for 8 months prior to the termination of his employment, worked as an underpresser in the pants department at an hourly rate. He also ran errands, drove the Yospers' car, fixed belts, and did other general work, and it was for that reason, according to Harry Yosper, that he was paid on an hourly basis. Bagliere, admittedly, was not active in the Union.

At the close of work on Thursday, August 14, 1941, Foreman Yosper informed Bagliere that beginning the next day, Friday, Bagliere would be placed on a piece-work rate, the basis on which all other employees in the pants department were paid. Yosper testified that the change was made because Bagliere had been wasting too much time on his job. Bagliere admitted that Foreman Yosper had discussed changing his rate to a piece-work basis on several prior occasions and that on this particular occasion he had agreed "to give it a try." Bagliere also admitted that before the termination of his employment, Minnie Yosper had often complained to him of his smoking and of his taking too much time when he went on errands.

When Bagliere finished his work on Friday, he complained to Foreman Yosper that the piece-work prices needed adjustment because he had had to work twice as hard to earn only a few cents more than he would have made on an hourly rate, and that he wanted Yosper's reply to his complaint the following morning. Yosper advised him that he would have to think the matter over. The following morning upon Bagliere's inquiry, Yosper informed him that he would not adjust the piece-work schedule and that Bagliere should continue work at this rate. Thereupon Bagliere returned to his work until sometime

[22] Counsel for the Union stated that insofar as the Union's memorandum is inconsistent with the position presented at oral argument, the latter position is the one finally adopted by the Union.

before 12 o'clock, when he punched out his time card and after some further talk with Yosper, left the factory.

According to Bagliere's version of what occurred on this Saturday morning, Minnie Yosper approached him as soon as she came into the factory, complained to him that he should not have gone to Harry Yosper with his demand for a price adjustment instead of to her, and that after further argument on the matter, Minnie Yosper abruptly told him "to finish up and to go home and not come back." He testified that "she fired me right there," although he admitted that in all his experience at the plant he had no knowledge of any other discharge of an employee by Mrs. Yosper. Although Naffah, called as a witness by the Board testified that on the evening of the same day Bagliere expressed his dissatisfaction with the piece-work prices and stated that Mrs. Yosper had told him to "go ahead, get out, punch your card and go home," we agree with the Trial Examiner that this testimony does not establish this fact, since at most it is merely a repition of Bagliere's own version of the occurrence as he related it to the witness. Corroboration of Bagliere's testimony was sought to be established through Antoinette Laudani, an operator in the pants department, who worked about 10 feet from Bagliere's pressing machine and who testified that she was present on the Saturday in question and had overheard the argument between Bagliere and Mrs. Yosper, during the course of which Mrs. Yosper told Bagliere that "if he (Bagliere) wasn't satisfied, he didn't have to stay . . ., that he was through and he didn't have to come to work any more." However, we agree with the Trial Examiner and give no credence to Laudani's testimony. Laudani first testified that she always punched her time card on the days she worked. Confronted, on cross-examination, with her time card for the week of August 15, which showed that she did not punch her card on August 16, the day of Bagliere's alleged discharge, she admitted that she had previously testified falsely. In addition Laudani testified that she turned in piece-work slips for every day she worked. The respondent denied that it had received a piece-work slip from Laudani for August 16 and its pay-roll voucher which contained the computation of Laudani's earnings for the week of August 15, did not include a record of any work by Laudani for the day in question. We conclude, as did the Trial Examiner, that the testimony of Bagliere as to his alleged discharge is not corroborated by any substantial, credible evidence.

Minnie Yosper denied that she had discharged Bagliere or that she reprimanded him for discussing the piece-work rates with her husband. She testified that she had only asked Bagliere why he was dissatisfied with the piece-work rates and had endeavored to persuade him to try working on the piece-work basis for a while, promising him that she would see what she could do with her husband about readjusting the piece-work prices. She testified further that after this discussion and as she was about to leave the factory, Bagliere said to her "Good-bye, and if you don't see me again, it is good-bye." Harry Yosper testified that he also made an effort to induce Bagliere to give the piece-work rate a trial, assuring him that he would not lose anything by it. His testimony is uncontradicted that after Mrs. Yosper had talked with Bagliere and had left the factory, Bagliere continued with his work until a little after 11 a .m. when he stopped working, bought Yosper a Pepsi-Cola and engaged him in conversation during which, according to Yosper, Bagliere said, "Harry, I am sorry I had to be like that, but I have a better job and I am going to leave." The Yospers both testified that they did not want to lose Bagliere and that they had offered to reemploy him on numerous occasions from the day he ceased working up to the time of the hearing. This testimony of the Yospers appears credible.

We find, as did the Trial Examiner, that the respondent did not discharge Joseph Bagliere on August 16, 1941, for union membership, activity or for any other cause. We find further that Bagliere's transfer from an hourly to a piece-work rate was not discriminatory and that he voluntarily left his employment with the respondent.

2. Rose Pinto

The Union also filed exceptions to the Trial Examiner's finding that the respondent had not, contrary to the allegations of the complaint, discharged Pinto because of her union membership and activity. In this case also the Union has taken inconsistent positions. The Union's final position appears to be that, while there was just cause for Pinto's discharge, the respondent was, nevertheless, motivated, in whole or in part, by her union membership and activity. The respondent admits the discharge but asserts that it was for cause.

Pinto was employed as a machine operator in the pants department and had worked on bar tacking, looping, and

buttonholes for about a year. On the morning of September 9, 1941, she failed to appear for work because she was ill. Although she made an effort to notify the respondent that she would not be able to work, the respondent asserted that it had not received such notice.[23] Harry Yosper claimed that Pinto worked on a special machine, which could only be handled by her or one or two other girls, that she habitually absented herself from work, and that her absences always disrupted the entire routine of his department. He testified further that, on this particular occasion, his department was very busy and that when Pinto failed to appear for work and he had no word from her as to whether she would come in to work, he told Victoria Rizkallah to go to Pinto's home that evening and tell her that she need not come in to work because he "would just as soon break in new help." Pinto admitted being absent on numerous occasions because of her illness or that of some member of her family, and Victoria Rizkallah, a witness for the Board, admitted that Pinto had been absent from work more often than any other employee in the shop.

Pinto signed an application for membership in the Union on May 27, 1941, more than 3 months prior to her discharge. Her union activity consisted of attendance at the union meeting on July 23 at which the consent election scheduled for July 25 was discussed and another small meeting which was held shortly prior to the July 23 meeting. She once accompanied the union organizers and two other employees to the home of Anna McMillan, a prospective member, but did not participate in the membership solicitation, remaining in a car outside the house. She discussed union matters with other employees, but by her own admission, was "a pretty quiet person" and while in the shop, "minded [her] own business strictly." Pinto also testified that Minnie Yosper had questioned her about her union membership and attendance of the July 23 meeting and that Harry Yosper approached several employees on July 25 and said "Well, I am glad, Mrs. Pinto, we have a union leader in the shop." Harry Yosper admitted that he had made refer-

[23] It was stipulated that a gas station proprietor in Pinto's neighborhood would testify, if called as a witness, that he had word from Mrs. Pinto to telephone her employer that she was ill and unable to go to work, that he telephoned and that someone who answered advised him that "the forelady" was not in, but that he would deliver the message to her.

ence to "union leaders" but asserted that this remark was not specifically addressed to Pinto. Although we have found that Foreman Yosper made reference to "a union leader," the evidence is not sufficient to convince us, nor did it convince the Trial Examiner, that Yosper's remark was made directly to Pinto. Admittedly, the Yospers spoke to her about the Union on only two occasions but then when she was one of a group of employees. Under the circumstances we are not convinced that Pinto's discharge was occasioned by her union membership or activity, and we find as did the Trial Examiner, that the respondent discharged Rose Pinto on September 9, 1941, for cause, and not because of her membership in or activities on behalf of the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent as set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since we have found that the respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and that it take certain affirmative action which we deem necessary to effectuate the policies of the Act.

Since we have found that the respondent refused on June 12, 1941, and thereafter, to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, we deem it necessary to effectuate the policies of the Act that the respondent be required, upon request, to bargain collectively with the Union. We shall so direct.[24]

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[24] The respondent introduced into evidence its pay roll of March 5, 1942, by which it appears, as the respondent asserted, at oral argument, that a sufficient number of union members had left the respondent's employ by that date to affect the Union's majority. This alleged loss of majority is not determinative of the remedy to be ordered. We have consistently held that the only means by which a refusal to bargain can be remedied is an affirmative order requiring

Since the respondent's unfair labor practices, as found above, included statements of supervisory employees that the plant would shut down and that the respondent would cease operations if the Union won a collective bargaining election, we shall order the respondent to post appropriate notices containing a statement that the plant will not close and that the respondent will not cease operations in the event that the employees select the Union, or any other labor organization, as their collective bargaining representative.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the respondent at its plant in Lawrence, Massachusetts, excluding executives, supervisors, and clerical employees, have at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Amalgamated Clothing Workers of America was at all times material herein and now is the exclusive representative of all the employees in the above unit for the

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the employer to bargain with the Union which represented a majority at the time the unfair labor practice was committed. Cf. *N. L. R. B.* v. *P. Lorillard Company*, 314 U. S. 521, enf'g *Matter of P. Lorillard Company etc.* and *Pioneer Tobacco Workers' Local Industrial Union No. 55*, 16 N. L. R. B. 684; *N. L. R. B.* v. *Bradford Dyeing Association*, 310 U. S. 918, enf'g *Matter of Bradford Dyeing Association* and *Textile Workers' Organizing Committee of the C. I. O.*, 4 N. L. R. B. 604; *International Association of Machinists* v. *N. L. R. B.*, 311 U. S. 72, enf'g *Matter of The Serrick Corporation* and *International Union, United Automobile Workers of America, Local 459*, 8 N. L. R. B. 621; *Bussman Mfg. Co.* v. *N. L. R. B.*, 111 F. (2d) 783 (C. C. A. 8), enf'g as modified *Matter of Bussman Manufacturing Company* and *International Association of Machinists, District No. 9*, 14 N. L. R. B. 322; *N. L. R. B.* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4), enf'g *Matter of Highland Park Manufacturing Co.* and *Textile Workers Organizing Committee*, 12 N. L. R. B. 1238. See also *Matter of Clarksburg Publishing Co., et al.* and *The Newspaper Guild of Clarksburg No. 118 of the American Newspaper Guild (Affiliated with the Congress of Industrial Organizations)*, 25 N. L. R. B. 456.

purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with Amalgamated Clothing Workers of America as the exclusive representative of its employees in an appropriate bargaining unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

7. The respondent, with respect to the termination of employment of Joseph Bagliere and Rose Pinto, has not engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act.

ORDER

Upon the basis of the above findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Franks Bros. Company, Lawrence, Massachusetts, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all the production and maintenance employees at its Lawrence plant, excluding executives, supervisors, and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all the production and maintenance employees at its Lawrence plant, excluding executives, supervisors and clerical employees in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will not close its plant or cease its operations in the event that the employees select the Amalgamated Clothing Workers of America, or any other labor organization, as their collective bargaining representative; and (3) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the First Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent discharged Joseph Bagliere and Rose Pinto because of their membership in and activity on behalf of the Amalgamated Clothing Workers of America, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 8th day of October 1942.

[SEAL]

HARRY A. MILLIS,
Chairman,
WM. M. LEISERSON,
Member,
National Labor Relations Board.

BEFORE THE NATIONAL LABOR RELATIONS BOARD [1]

FIRST REGION

Case No. I–C–1797

In the Matter of FRANKS BROS. CO. *and* AMALGAMATED CLOTHING WORKERS OF AMERICA (C. I. O.)

COURT HOUSE,
LAWRENCE, MASSACHUSETTS,
Monday, March 16, 1942.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m., Eastern War Time.

Before: WILLIAM F. GUFFEY, Jr., Trial Examiner.

Appearances: Albert J. Hoban, appearing for the National Labor Relations Board. Benjamin E. Gordon, 18 Tremont Street, Boston, Mass., appearing for the Respondent, Frank Bros. Co. Harry Gordon, 18 Tremont Street, Boston, Mass., appearing for the Respondent, Franks Bros. Co.

* * *

Mr. HOBAN: As Board's Exhibit No. 4 I offer in evidence a stipulation covering the service aspects of the respondent's business between counsel for the company and counsel for the Board, being dated March 12, 1942. [7]

TRIAL EXAMINER GUFFEY. Any objection?

Mr. GORDON. No objection.

TRIAL EXAMINER GUFFEY. It may be received as Board's Exhibit No. 4.

(Whereupon the document above referred to was marked "Board's Exhibit No. 4" in evidence.)

* * *

ABRAHAM A. FRANKS, Board witness. [8]

DIRECT EXAMINATION [9]

* * *

By Mr. HOBAN:

Q. Mr. Franks, are you connected with the Franks Brothers Company?—A. I am clerk of the Corporation.

Q. Who are the other officers of the corporation—A. Samuel Franks is president and treasurer and Harry E. Franks is assistant treasurer.

Q. Samuel Franks is your father?—A. And Harry E. Franks is my brother.

Q. And the principal office and place of business of Franks Brothers is at 46 Chandler Street, Lawrence, Mass.?—A. Yes.

Trial Examiner GUFFEY: What do you mean by clerk?

The WITNESS. I think in some states it is called secretary of the Corporation.

By Mr. HOBAN:

Q. At 46 Chandler Street the Samson-Crane Company also has its principal office and place of business?—A. That is right, on the third floor of the building called the "Addition."

Q. Are you also an officer of the Samson-Crane Company?—A. I am president and treasurer of the Samson-Crane Company.

Q. What is the corporate name of Samson-Crane?—
[10] A. Samson-Crane Co. I was wrong. I am just treasurer of Samson-Crane Co., not president and treasurer.

Q. And what business is Samson-Crane engaged in?—A. In retailing. It operates its own stores and does some manufacturing. That is, in the trade it is considered a manufacturing company and a retailer.

Q. Are you also an officer of a corporation called the Richards Clothing Company?—A. I am clerk of the corporation.

Q. And where does that corporation have its office and principal place of business?—A. Since January 1 of 1942 it has had its principal place of business at 46 Chandler Street. Prior to that time it had it at 430 Essex Street, Lawrence.

Q. Now, by whom is the voting stock of the Franks Brothers Company held?—A. The voting stock? I think out of 300 shares of the common stock of Franks Brothers company 298 shares are held by Samuel Franks, one share by myself and one share by my brother.

Q. And who owns the voting stock of the Samson-Crane Company?—A. I do in its entirety.

Q. And of Richards Company?—A. My brother owns
[11] all the stock of the Richards Clothes Company, all the common stock.

Q. What is the company name of Richards?—A. Richards Clothes Co. I think it is Richards, with an "s."

Q. You stated that Samson-Crane has several retail stores?—A. Yes.

Q. Where are they located?—A. Manchester, New Hampshire; Portland, Maine; Fitchburg, Massachusetts; Lynn, Massachusetts; Somerville, Massachusetts; and Quincy, Massachusetts.

Q. During the year 1941 did Samson-Crane carry on any manufacturing operations in any place other than Chandler Street?—A. Yes, it did. May I qualify that a little bit?

Q. Go ahead and explain. A. In the trade a manufacturer is considered one who buys cloth and has it made, manufactured for him, either on a contract basis or on a cut, make, and trim basis, and he is considered in the trade a manufacturer. If that is the definition of a manufacturer in your opinion, Samson-Crane Company did have clothes made elsewhere than with Franks Brothers Company.

Q. During 1941 Samson-Crane did buy cloth, didn't it?—A. That is right.

Q. Approximately how much cloth and what was the [12] value of that cloth which was purchased by Samson-Crane in 1941?—A. May I consult a memorandum that I have?

Q. Certainly.—A. Samson-Crane Company purchased during the year 1941 approximately 100,000 yards of cloth.

Q. What would the value of that cloth be?—A. Approximately $200,000.

Q. And what were the total sales of Samson-Crane in 1941?—A. The total retail sales of Samson-Crane were approximately $480,000.

Q. That would represent about how many units, considering a suit a unit?—A. Oh, I should say about 20,000 units.

Q. During the year 1941 did Franks Brothers do any work upon material owned by Samson-Crane?—A. They did.

Q. And what type of work did they perform on that material?—A. What is considered in the trade cut, make and trim. They manufacture the conversion of the cloth into clothing.

Q. When Franks Brothers got through with the material would it be a finished garment?—A. It would.

Q. When they took it it would just be yards of ma- [13] terial?—A. When they took it from Samson-Crane Company, that is right.

Q. Approximately how many units did Franks Brothers cut, make and trim for Samson-Crane Company during 1941?—A. I think about eleven or twelve thousand units. I am not quite sure.

Q. Approximately what percentage of that number of units was taken by Samson-Crane and then shipped to its retail stores outside of Massachusetts?—A. About 20 percent.

Q. In other words, 20 percent of the garments which Franks Brothers cut, made and trimmed for Samson-Crane were shipped to Samson-Crane outside the state of Massachusetts?—A. That is right.

Q. And sold by Samson-Crane's retail stores?—A. That is right.

Q. About what percentage of the entire product of Samson-Crane did Samson-Crane sell in its own retail stores?

Mr. GORDON. I would like to have that question again.

(Question read.)

A. Samson-Crane Company sold 100 per cent of its product.

Q. Samson-Crane during 1941 sold about 20,000
[14] units?—A. That is right.

Q. Of the 20,000 units what percentage was sold in Samson-Crane retail stores?—A. All of it.

Q. And what percentage was sold in those retail stores located outside of Massachusetts?—A. About 20 percent.

Q. In other words, Samson-Crane sold about 20 percent of its own entire product outside of Massachusetts and it sold approximately 20 per cent of the product made for it by Franks Brothers outside?—A. That is right. That is purely an estimate. I have no exact figures. It is impossible for me to obtain them.

Q. You yourself are more familiar with the operation of Franks Brothers and Samson-Crane than any other individual, aren't you?—A. I am more familiar with Samson-Crane. I wouldn't be absolutely sure about Franks Brothers.

Q. You are the works manager of the Franks Brothers' plant?—A. That is right.

Q. And you are familiar with the amount of material which goes out and comes in, in the normal course of business?—A. That is right.

* * *

Q. You are also familiar with the approximate figures [15]
of Richards Clothes, aren't you?—A. I am.

Q. During 1941 did Richards Clothes also operate retail stores.—A. It operated one retail store. [16]

Q. Where was it located?—A. In Lewiston, Maine.

Q. And did Franks Brothers do any cut, make and trim for Richards Clothes in 1941?—A. A small amount, approximately 700 units.

Q. And out of the 700 units approximately the entire amount would be sold at the Lewiston retail store of Richards Clothes?—A. Richards Clothes, yes.

Q. What were the total sales of Richards Clothes in 1941?—A. Approximately $40,000.

Q. That represents approximately how many units?—A. About 2,000.

Q. Now, besides the cut, make and trim work which Franks Brothers did for Samson-Crane and Richards it also performed the manufacturing operations for itself, didn't it?—A. It does.

Q. And the figures in the stipulation which is Board's Exhibit 4 represent the figures upon the manufacturing operations performed by Franks Brothers for itself?—A. That it right.

Q. Will you describe for us, taking a typical case of Samson-Crane, the manner in which the cloth was received by Samson-Crane and turned over to Franks Brothers, and [17]
so forth until it was finally sold at the retail store?—A. Samson-Crane would purchase a piece of cloth and it would come into the 46 Chandler Street. It would be marked with an identification, a lot number, and the name of Samson-Crane Company on it. Samson-Crane Company would pay the freight bill—that is, I am a little ahead of my story. They would pay the freight, it would be immediately identified by a lot number, and Samson-Crane Company's name and initials on the tag of the goods. It would come up to the space occupied on the third floor by the Samson-Crane Company and at some future time it would be cut together with some other cloth probably of Samson-Crane or Franks Brothers Company cloth. It would keep that lot number and identification all the way through the manufacturing operation. When a suit would be completed the shipper, Franks Brothers' shipper, would turn the goods over to the Samson-Crane Company shipper and he would segregate the—divide up

the goods, the suit, a lot of suits, whatever there might be, and ship them to each of the stores, a certain quantity to each store.

Q. Now, Samson-Crane occupies a third floor——A. Space.

Q. Space, at 46 Chandler Street, in sort of an addition [18] to the building?—A. That is right. We call it an addition. It was built afterwards.

Q. It is in that section that the receiving department of Samson-Crane is located?—A. That is right.

Q. When material is received at 46 Chandler Street it is received on the ground floor, I presume?—A. Yes.

Q. Who takes it from the ground floor up to the third floor?—A. The Samson-Crane shipper and receiver.

Q. What is the Samson-Crane Company's shipper's name?—A. In 1941 it was Peter Weshonko, who is now in the Army, and in 1942 a fellow by the name of John Boehm.

Q. What was Boehm doing in 1941?—A. He was working for Franks Brothers Company as a shipper and receiver.

Q. So that in 1941 the way it was set up Weshonko was on the Samson-Crane payroll and Boehm was on the Franks Brothers' pay roll?—A. That is right.

Q. Now, did either one assist the other in transporting those materials up from downstairs?—A. Yes; they assisted. I assisted them, too.

Q. Would Weshonko at some times give Boehm a [19] lift?—A. Yes. Well, occasionally.

Q. When material came in was it all billed to Simpson-Crane by the firm from which you purchased it?—A. Yes.

Q. You stated that at some time it was cut. It would be cut by Franks Brothers' employees, wouldn't it, although it was still tagged Samson-Crane?—A. That is right. It was a manufacturing process.

Q. How many employees had Samson-Crane in 1941 at 46 Chandler Street?—

Mr. GORDON. What was that question, please?

(Question read.)

A. Three employees and sometimes a fourth.

Q. And what were the classifications of those three employees?—A. There would be two bookkeepers permanently employed and one shipper permanently employed and occasionally as was required we would have extra help

come in both in the bookkeeping and in the shipping department.

Q. Now, who owns the building at 46 Chandler?—A. Franks Brothers Company.

Q. And does Samson-Crane pay rent to Franks Brothers for that place?—A. It does.

Q. And it did in 1941?—A. It did. [20]

Q. And in the 1942 income tax return I take it Franks Brothers entered in as income the rent received from Samson-Crane?—A. It should have.

Q. You made it out, didn't you? You signed it?—A. No, I didn't sign it, but I should have.

Q. The electric light bill, is that paid for by Franks?—A. It is paid for by Franks for the company.

Q. And then does Samson-Crane reimburse Franks Brothers for any light they use?—A. No. Our agreement for the rent is to include light and heat.

Q. How about telephone service?—A. No. Samson-Crane has its own telephone.

Q. Is that telephone located in the office of Franks Brothers or over in the Samson-Crane division?—A. Over in the Samson-Crane section.

Q. Does Samson-Crane pay rent only for the addition? Or does it also pay rent for the office space?—A. It pays rent for the addition and the office space together.

Q. Is there a written agrement embodying the terms of this rental?—A. No. We have been there since 1933 and we have always paid rent. [21]

Q. Which is the oldest of the two corporations?—A. Franks Brothers is the oldest.

Q. And then the next one?—A. Is Samson-Crane Company.

Q. When was Samson-Crane incorporated?—A. I have forgotten now whether it was 1928 or 1929.

Q. And Richards Clothes, when was it incorporated?—A. I don't know. Some time around that time. It may have been a little later.

Mr. GORDON. I can supply that information. It was 1929.

Q. Now, you described the manner in which the material came in, that it was billed to Samson-Crane and it was turned over to Franks Brothers at 46 Chandler. Did the same thing apply with respect to materials owned by Richards and worked on by Franks Brothers?—A. It did.

Q. Does Richards occupy any space at 46 Chandler

Street, or did they in 1941?—A. In 1941 it had a small section about 10 by 10 in which it stored some cloth. It had no office there.

Q. You spoke of another location where they had a place of business in Lawrence?—A. That is right.

[22] Q. At which location did it keep most of its material, at Chandler Street or the —— A. It didn't have very much material in 1941. I don't know, I am not familiar with that material they had in Essex Street. I am only familiar with what they had in Chandler Street. I don't believe they had hardly any material though in 1941 stored.

Q. Did Richards have any employees engaged at 46 Chandler Street during 1941?—A. No.

Q. Then who handled that material?—A. Harry Franks himself.

Q. What does he do at the plant?—A. Nothing. I mean by that when the cloth came in he would take care of it himself. By that I mean if goods came in he would take it upstairs and lot it up himself and see that it was cut and take care of the whole proposition himself. You see he only manufactured approximately 700 units which would mean about 30 pieces of goods through the whole year, and that didn't require very much work.

Q. Franks Brothers has a janitor who works at 46 Chandler Street?—A. That is right.

Q. And had one in 1941?—A. That is right.

[23] Q. Did that janitor also keep the place which was occupied by Samson-Crane and Richards clean?—A. I don't know. I think our understanding was that we were supposed to have janitor service from Franks Brothers Company for the rent, but I don't think he did very much sweeping up there.

Q. Isn't it true that because of your close family relationship you were not apt to engage in precise definitions about what the arrangement would be on a type of thing like janitor service?—A. Well, I don't know. You would be surprised sometimes.

Q. In general that is true?—A. In general it wouldn't be expected that he would be very precise.

Q. Now, you manage the Franks Brothers factory?—A. I do.

Q. Do you receive any salary or reimbursement from Franks Brothers?—A. I do not.

Q. How much time each week would you say you spent working for Franks Brothers?—A. Oh, I should say about two to three hours; two hours a day on an average.

Q. The rest of the time you are absent from the plant?—A. No; I am not absent from the plant. I am absent from the plant about three or four hours a day on an average. [24]

Q. Do you go away for more than one day at a time?—A. Yes.

Q. You are familiar with the set-up of operations performed by Franks Brothers, aren't you, in the different departments?—A. I am.

Q. I take it you are in supreme command?—A. No; I am not, sir. I am not in supreme command. Only as far as the plant itself is concerned.

Q. The product?—A. As the product is concerned.

Q. You are in charge of production, the remaining operations are in charge of your father?—A. My father purchases the trimmings and takes care of the finances and takes care of some of the Franks Brothers purchases and takes care of the retail stores which they operate; and when I am not there he sees that everything goes the way it ought to.

Q. Now, referring to the production end of the business, into what departments does it break down?—A. We have what I consider four departments; cutting department, coat department, pant department, and vest department.

Q. Who is in charge of the cutting department?—A. A man by the name of Sam Perperian.

Q. And the coat department?—A. A man by the name of Jack Freedman. [25]

Q. Pant?—A. Harry Yosper.

Q. And vests?—A. Luke—I don't know his last name.

Q. Krikorian, isn't that his last name?—A. That might be it.

Q. Do these four people supervise the work of the employees within these four departments?—A. They do.

Q. And did they in 1941?—A. Yes; they did.

* * *

Cross-examination by Mr. Gordon: [34]

Q. Mr. Franks, does your father have anything to do with the finances of the Samson-Crane Company?—A. None whatsoever. [35]

Q. The cut, make, and trim performed by Franks Brothers Company on the Richards Clothes work, in regard to that work where is it delivered to Richards Clothes?—A. In Lawrence.

Q. And Richards Clothes during 1941 in turn shipped it to Lewiston, Maine; it that correct?—A. That is right.

* * *

[57] Trial Examiner GUFFEY. I am not sure that I heard the witness's testimony with respect to who did the importing of the woolens and worsteds and rayons and the miscellaneous findings. There has been testimony about three different corporations here and I want the record to show whether or not Franks Brothers Company itself imported this material.

[58] Mr. GORDON. The stipulation shows that Franks Brother Company does import certain materials that it uses for itself. Franks Brothers also has a retail store, so that it purchases its own cloth which Franks Brothers makes up, that is, Franks Brothers purchases cloth, manufactures it into a suit and sells it purely at retail in Lawrence, Massachusetts.

Trial Examiner GUFFEY. But the figures stated in paragraph 3 of this stipulation, Board's Exhibit 4, are with reference to the materials that Franks Brothers itself imports.

Mr. GORDON. That is right.

Mr. HOBAN. That is the way I understand the witness's testimony. Can we have that as an agreed fact, Mr. Gordon, in case he wasn't clear in his testimony?

Mr. GORDON. That is, that Paragraph 3 of the stipulation refers only to raw materials purchased and used by the company in the manufacture of its finished products. Now, let me explain that. The findings, and so forth, that are used in the cut, make, and trim by Franks Brothers in clothes of Samson-Crane and clothes of Richards Clothes are included in the stipulation, that is, Board's Exhibit 4, in the purchases of raw materials, and so forth. In other words, the purchases of raw materials cover the cut, make, and trim that is used in operations on clothes of

[59] Samson-Crane and Richards Clothes.

Trial Examiner GUFFEY. There is just one question I want to know. I think the answer is very simple. I want to know if these materials that are imported from outside the state of Massachusetts are brought in by Franks Brothers itself and not Samson-Crane or Richards Clothes. That is the one thing I want to ask.

Mr. GORDON. The materials mentioned in Paragraph 3 are purchased by Franks Brothers and some of them are purchased in the State of Massachusetts and some of them

are purchased in the state but shipped to the company from out of the state.

* * *

FRANK LERMAN, Board witness.

DIRECT EXAMINATION [60]

By Mr. HOBAN:

* * *

Q. What is your occupation, Mr. Lerman?—A. I am employed by the Boston Joint Board, Amalgamated Clothing Workers of America, as assistant manager.

Q. Is the Amalgamated Clothing Workers of America affiliated with the Congress of Industrial Organization?—A. Yes; C. I. O.

Q. Your position with the Joint Board is a full-time job, is it?—A. Full-time job.

Q. How long have you been assistant manager of the Boston Joint Board?—A. About eight years.

Q. Will you describe for us what the Boston Joint Board is in its relation to the Amalgamated Clothing [61] Workers of America?—A. The Joint Board is constituted of representatives of each individual local affiliated with the Amalgamated Clothing Workers in Boston and vicinity. Each local elects seven members and these seven members of each local constitute the Joint Board.

Q. How many locals are there within the district?—A. They have thirteen locals.

Q. And what is the territorial jurisdiction of the district?—A. It goes up as far as Boston, Lawrence, Salem, Peabody; Gloucester, North Leominster, Fitchburg.

Q. All these cities and towns are within the state of Massachusetts. Did you mention Lawrence?—A. I did. I surely wouldn't skip that.

Q. Are you a member of the Amalgamated Clothing Workers Union?—A. Yes; I am.

Q. How long have you been a member?—A. Since 1913 with the interruption of a couple of years in between.

Q. What is the function, the purpose of the Amalgamated Clothing Workers of America?—A. The function of the Amalgamated is to establish collective bargaining [62] between labor and industry so as to prevent strikes, lockouts, adjust wages, establish grades in the industry in order to give manufacturers the opportunity to keep on a competitive basis.

Q. And does the Amalgamated Clothing Workers Union deal with employers within the Boston district?—A. It certainly does.

Q. And has contracts covering employees?—A. Contracts covering employees in Boston, I would say, and the locality that I have mentioned almost to 85 percent.

Q. What are your duties as assistant manager of the Boston Joint Board?—A. I am supervising business agents and adjusting complaints myself in the shops, having conferences with employers.

Q. Have you in the course of your duties as assistant manager of the Boston Joint Board during the year 1941 had any contact with any officials of Franks Brothers Company?—A. I did.

Q. Can you tell us approximately when that was?—A. I would not remember the date exactly but I——

Q. The respondent's answer in the case states that on June 12th——

[63] Mr. GORDON: On or about June 12th.

Q. On or about June 12, 1941, the company refused to enter into an agreement with the union.—A. I think it was about the same time that I have gotten the information from one of our organizers, Mr. Hascall, that he has contacted some employees of Franks Brothers in Lawrence and they signed up cards and they have joined the union, and he told me that with a majority of the cards whether or not I can contact Mr. Franks in order to establish collective bargaining.

I called Mr. Franks on the telephone about that date and I asked him whether or not I can come out and talk to them in the city of Lawrence. I think it was about June 12th that I come out here in Lawrence and I met Mr. A. Franks and his father in their office, and speaking of general conditions in the clothing industry I told them that people are signing up cards; you know it isn't what it was in 1913 or 1915; that under the law of the land now collective bargaining is being accepted by everybody and there is no reason why we should fool around; the best thing is to enter negotiations and agree to a union shop, and that is all.

Of course needless to say that the answer of the employer was that they are not ready to negotiate with the union. I think that Mr. Abraham Franks told me that

[64] the best thing would be is to leave them alone and give them time up to Christmas as he don't know what he

will do with his business at the present time, and after Christmas he would talk to me.

Q. When you went in there did you explain to him who you were?—A. Yes.

Q. Had you ever met either one of the Franks before?—A. Yes; I had met them.

Q. Did you know them to speak to?—A. Yes; I did.

Q. Had dealings with them in the past, did you of some kind?—A. I did.

Q. Have you told us now everything which was said at that conference?—A. This conference ended practically without results, simply as a conversation.

Then Mr. Franks told me—Abraham Franks told me that he expects to be in Boston within a week or so and I asked him whether it would be a possibility of seeing him in Boston and he said he had no objection.

Then I believe I called again and made an appointment to meet him in the Bradford Hotel lobby about ten days after the first conference, and over there it was the same [65] repetition of collective bargaining, which Mr. Franks kept on saying we should leave him alone until Christmas.

Then I told Mr. Franks if we can't come together, then the only things to do is that we would proceed according to law and we would certify the cards with the National Labor Relations Board and ask for an election. That is as far as we went.

Q. Did Mr. Franks at that time tell you whether he questioned your majority or right to represent the employees?—A. Well, he did not question the majority. He simply said to leave him alone until after Christmas.

During the course of the conversation Mr. Franks had told me this, that some time ago he had a strike in Lawrence and he asked me—he says, "Well, if you are so sure about it why don't you call another strike?" And I told him that strikes are not necessary just now, we can adjust things in a peaceful way.

Q. Did you have any meetings after that with Mr. Franks?—A. No.

Q. After your second meeting with Mr. Franks——

Trial Examiner GUFFEY. Which Mr. Franks is this?

The WITNESS. Mr. Abraham Franks.

By Mr. HOBAN:

Q. That is the same man who testified this morning?— [66] A. Yes.

Q. He is the same man you met at the Bradford Hotel?—A. Yes.

Q. After your meeting at the Bradford Hotel did you take any steps toward further bargaining between the company and the union?—A. No. I just told Hascall to go ahead and certify the cards to the National Labor Relations Board and from then on Mr. Hascall handled that.

* * *

[69] CROSS-EXAMINATION

* * *

By Mr. GORDON:

Q. Will you tell us again what was the talk you had with Mr. Hascall in regard to employees of Franks Brothers?—A. Mr. Hascall told me that he signed up the employees of the Franks Brothers and he has quite a number of cards—a majority I would say.

Q. He didn't tell you how many cards he had, did he?—A. No.

Q. And you never saw the cards, did you, at that time?—A. No; I didn't.

Q. As a matter of fact, this talk with Mr. Hascall was just a routine conference in the office when he told you he was going about organizing Franks Brothers?—A. No. I knew that Hascall was here in Lawrence doing some organizing work.

Q. But you didn't know how successful he had been?—A. No.

Q. Other than to have signed some people up; is that correct?—A. Will you repeat that again?

(Question read.)

[70] A. I knew he was successful in signing up a majority of the shop.

Q. Did Mr. Hascall tell you how many employees the shop had?—A. How many employees the shop had?

Q. Yes.—A. No; he didn't tell me how many the shop had, but I knew how many cards he signed up.

Q. As a matter of fact, you didn't know how many employees the shop had when you talked with Mr. Hascall?—A. That's right.

Q. Did you know how many cards he had signed?—A. That's right.

Q. How many did he have signed? How many did he tell you he had signed?

Mr. HOBAN. I object. There is no evidence that he told him he had any signed, the exact number he had signed.

Trial Examiner GUFFEY. Overruled.

A. He told me he had signed over fifty cards.

Q. He told you he had signed over fifty cards; is that correct?—A. That's right.

Q. Did you look at the cards?—A. No; I didn't.

Q. You never saw the cards?—A. No. [71]

Q. Before your conference with Mr. Franks, did you?—A. No.

Q. And as a matter of fact you never saw the cards at any time, did you?—A. No, I didn't.

Q. Hascall had them in his possession; is that correct?—A. Either Hascall or they were in the National Labor Relations Board. I don't know.

Q. Did the National Relations Board have the cards in their possession when you first called Mr. Franks?—A. No.

Q. Now, was there some talk between you and Mr. Hascall about it being better for you to go down to see the Franks Brothers Company because you knew them?—A. That's right.

Q. And you had a talk with Mr. Hascall and it was agreed that you would go down to see the Franks Brothers because you knew them and were fairly friendly?—A. Mr. Hascall told me that he was signing up people here and I have called on Mr. Franks because I know them, and I was trying to make a settlement.

Q. You were given a prompt appointment with the Franks, weren't you?—A. Yes.

Q. I think you called up on one day and went down [72] to see them either that day or the next day; is that correct?—A. Yes.

Q. Will you tell us again what was said between you and Mr. Sam Franks and Mr. Abe Franks? Where did you meet them, in Lawrence here?—A. Yes.

Q. Now, tell us what was said?—A. Well, I have testified I came in and I told them the people are being signed up and there is no need—everybody is getting collective bargaining and there is no need of going around and just wasting our time and their time; that we come together and we can agree on collective bargaining.

Q. First you talked over old times, didn't you—the social amenities of the situation?—A. That is right.

Q. And that conference was an entirely friendly one all the way through?—A. Yes.

Q. It was old friends getting together?—A. In a way; yes.

Q. And you told the Franks that you had an organization drive on among their employees; is that correct?—A. Yes.

[73] Q. As a matter of fact, you told him that you hadn't seen the cards, didn't you?—A. I didn't speak to him about cards at all, whether I see them or I didn't see them.

Q. You didn't mention cards at all during that conference; is that correct?—A. No. I told them people are signing up in the union.

Q. And that is as far as you went, is that correct?—A. Yes.

Q. And that is as far as you ever went in your talks with Mr. Franks?—A. That's right.

Q. You pointed out to the Franks, Mr. Sam Franks and Mr. Abe Franks, the advantages of collective bargaining that would be enjoyed by the Franks Brothers Company, didn't you?—A. I pointed out to them that everybody is going into collective bargaining and that there shouldn't be no exception.

Q. You pointed out that they would gain some benefits, did you, by signing a contract with the Amalgamated?—A. No; I didn't say that.

Q. Don't you feel that way?—A. What?

[74] Q. Don't you feel that way?—A. I feel that they could come under the collective bargaining, but I didn't promise them that they would gain anything by signing. The only thing I told him, that instead of having dissension among the employees and among the union, that it will be best to sign up.

Q. And I think you told them, did you not, that it was easier dealing with the union than a lot of employees, because if you dealt with the union you would only have one person to talk to about wage increases, whereas this way you are bothered by a lot of individuals asking for raises? Isn't that right?—A. I did.

Q. That was one of the benefits you thought Franks Brothers would get; isn't that correct?—A. Maybe.

Q. You mean Yes, don't you?—A. Yes.

Q. And you pointed out advantages that would be secured by having a union label, did you not?—A. I told him that if they would come into contact with the union that they would get a union label if we signed a union agreement.

Q. And you pointed out that that would be an advantage to the company too, didn't you?—A. It certainly would.

Q. And you talked about wages at that time too, didn't you?—A. Yes. [75]

Q. And what did you say about wages? Do you remember, Mr. Lerman?—A. I said if Amalgamated in general is getting an increase in wages they would come under it.

Q. Did you talk about the various prices then in effect at Franks Brothers Company?—A. The question came up that Mr. Franks—I don't remember which one—had asked me what grade—assuming that he signed up in the union, that was the argument used—what grade would you put me in, and that as you know there are certain grades of clothing, No. 1 grade and No. 2, No. 3, No. 4; and I told him that I can't possibly tell him what grade he would be in unless I go in the shop and find out how the garments are being made and then I would classify them for certain grades that we belong to.

Q. Do you remember talking about the fact that some of the prices, the piecework prices then in effect, were too high?—A. No.

Q. Didn't you say that?—A. No.

Q. And didn't you say some of them were too low?—A. No. I didn't discuss any piece price at all. [76]

Q. And didn't you say by signing a contract the net cost to the company would not be increased at all as far as their wage cost was concerned?—A. I told him that the net cost of the garment will be applied on the same grade of material that was applied somewhere else.

Q. And you told them that to mean that there would be no increase in the cost as far as the company was concerned?—A. I told him I didn't determine the grade; it depended upon what grade they are making.

Q. Did you intimate that it wouldn't cost any more?—A. I told them it wouldn't cost any more than it cost in Boston or anywheres around here.

Q. So that your testimony is that you didn't tell him that under the union prices that the cost of the garment

would not be increased at all; is that your testimony?—A. No. I told him they would come under the same rate as the people you have in Lawrence here or in Boston. It wouldn't be any higher.

Q. You told him it would be the same rate as thty were paying?—A. No.

Q. Didn't you?—A. I didn't know what they were paying. How could I tell him?

[77]

Q. At the conclusion of this conference—this was just sort of a feeler conference, wasn't it, to see how the company felt about the situation?—A. You ought to know about it.

Q. That's right, isn't it?—A. You ought to know about it.

Trial Examiner GUFFEY. Answer the question.

A. Yes.

Q. It was a feeler conference?—A. Yes.

Q. And that is why there was no mention of grades at all; isn't that correct?—A. It was only mentioned that the people are signing up in the union.

Q. That is all?—A. And that is all.

Q. And that is all that was mentioned at the second conference?—A. No. At the second conference——

Q. Just answer Yes or No.—A. That was all.

Q. That was all?—A. At the first conference.

Q. And that is all that was said about grades in the

[78]

second conference?—A. No.

Q. Didn't you testify that way a few minutes ago?—A. No.

Q. Are you sure?—A. I will repeat what I said. At the second conference I told him that we can't wait until Christmas, that if we couldn't enter into an understanding that we would proceed to the National Labor Relations Board to certify our cards.

Q. And that is all that was said about cards at the second conference; that is right, isn't it?—A. Yes.

Q. Now, you are sure of that?—A. Yes.

Q. And at the second conference when you talked about the cards you said no more than you had at the first conference, that is, that you had been proceeding to organize the employees and getting them to sign cards?—A. That is right.

Q. You are sure of these answers, aren't you?—A. I am.

Q. And that is all that was said during those two conferences, what you testified on cross-examination? That is all that was said about the cards at those conferences; is that right?—A. Yes. [79]

Q. As a matter of fact didn't you say that you hadn't seen the cards, which was a fact?—A. Well, I didn't see the cards.

Q. And didn't you say that to Mr. Franks, Al Franks?—A. What?

Q. That you hadn't seen the application cards and Hascall was taking care of it?—A. I didn't speak to Mr. Al Franks at all about the cards. I just spoke to him about collective bargaining and people signing up. He didn't question me whether I had cards or I hadn't.

Q. Now, at the second conference you said that unless the company would enter into an agreement that you would have to go to the Labor Board to establish your right to bargain; is that it?—A. That is right.

Q. And that was the effect of your second conference?—A. Yes.

Q. And did you talk about election at all?—A. I didn't speak about an election with Franks at the second conference. I told him I would go to the National Labor Board and consequently we would have to have an election on this thing.

Q. And as a matter of fact you said something else about election at that second conference, didn't you? [A pause.] Didn't you?—A. I didn't. [80]

Q. Do you recall saying that even if you lost the election it wouldn't make any difference, all it would do would be to postpone the inevitable for another year? Do you recall that?—A. I don't recall that; no.

Q. You wouldn't say that you didn't say it, would you?—A. I wouldn't recall that at all. I simply told Mr. Franks that he should understand that if we can't come together we would proceed to the National Labor Board and we would have to have an election.

* * *

Q. At the first conference you had with Mr. Franks on or about June 12th—was it—1941?—A. That is right. [91]

Q. Did you tell him that the Amalgamated Clothing Workers represented a majority of the employees or a majority of the employees in his plant had joined the Amalgamated?

[92] Mr. GORDON. May I have the question?

(Question read.)

Mr. GORDON. I object to that on the ground that that question has been answered many times and without equivocation, Mr. Trial Examiner, in this hearing.

Trial Examiner GUFFEY. Mr. Gordon, the witness testified about what had been said about grades and how much talk there was about grades. I don't know—I haven't the slightest idea what the answer is going to be, but I want to know if the union has ever claimed at these conferences to represent a majority of the employees.

Mr. GORDON. If the Examiner please, that question was covered fully both on direct and cross-examination and without any equivocation the answer has been put on this record and I submit that any question by the Examiner on this point now will only lead to a change.

Trial Examiner GUFFEY. I want the record to show whether the union made such an allegation in the first conference.

Mr. GORDON. I object to the question and I except to your ruling denying my objection.

By Trial Examiner GUFFEY:

Q. Answer the question.—A. The answer is Yes. I told him we had a majority.

Mr. GORDON. A further objection is that the question could not be any more leading than if the cross-examiner
[93] was putting the question. It is the type of question that should not have been put by the Board's counsel and has been put by the Trial Examiner.

Mr. HOBAN. Any further questions, Mr. Examiner?

Trial Examiner GUFFEY. Yes.

By Trial Examiner GUFFEY:

Q. Was anything said at the conference in the hotel in Boston concerning your representation of a majority?

Mr. GORDON. Same objection and same exception.

A. Yes. I told him the same thing. I told him we had a majority.

Trial Examiner GUFFEY. Now, Mr. Gordon do you want to take the witness?

Mr. GORDON. Yes. I move to strike all the testimony just given by the witness on questions of the Examiner.

Trial Examiner GUFFEY. Overruled. Motion denied.

Mr. GORDON. Exception.

By Mr. GORDON:

Q. Now, Mr. Lerman, let us go back to that conference, the first conference at the Franks Brothers Company. That was held in Lawrence, wasn't it?—A. Yes.

Q. And you had talked with Mr. Hascall about going down there to talk the general situation over with the Franks because you knew the Franks people; isn't that right?—A. Yes. [94]

Q. And Mr. Hascall had told you that he was organizing and had been in the past the employees of Franks Brothers Company; is that correct?—A. Yes.

Q. And that he had been getting them to sign cards in the Amalgamated Clothing Workers; is that correct?—A. Yes.

Q. Now, Mr. Lerman, you didn't see these cards, did you?—A. Mr. Hascall told me he had a majority.

Q. Answer the question Yes or No. You didn't see them then, did you?—A. When I spoke to Hascall I didn't see them.

Q. And you didn't see them before going down to see both Mr. Franks at Lawrence, Massachusetts, did you?—A. No; I did not.

Q. And you didn't know as a matter of fact how many people were employed by Franks Brothers Company, did you, at that time?—A. When I was in the conference?

Q. When you were at the first conference of June 12th at the Franks Brothers Company.—A. When I was in the conference of June 12th Mr. Franks told me they were employing about 75 people.

Q. You didn't tell us that before, did you?—A. You [95] didn't ask me that.

Q. I questioned you pretty extensively about what was said there, didn't I?—A. And I told you I had 50 cards.

Q. You didn't say anything about knowing how many employees Franks Brothers had, did you?—A. Didn't I tell you I had 50 cards signed?

Q. In your previous testimony this morning you never made any statement about having been told by Mr. Franks that they had a certain number of employees, did you?—A. You didn't ask me that.

Q. As a matter of fact I asked you whether you knew how many employees Franks Brothers had at that time, didn't I? You don't remember that?—A. Did you ask me how many employees?

* * *

By Mr. GORDON:

Q. You didn't testify on direct or cross-examination that you knew how many employees Franks Brothers had around June 12th, did you?—A. I knew how many they had after Mr. Franks told me.

[96] Mr. GORDON. May I have a responsive answer?

Trial Examiner GUFFEY. Mr. Lerman, when counsel asks a question will you answer? And if you want to explain later we will give you an opportunity later.

A. No; I didn't.

By Mr. GORDON:

Q. As a matter of fact, you didn't know at that time how many employees Franks Brothers had?—A. I did not.

Q. And you didn't know on June 12th, did you, how many employees Franks Brothers had?—A. On June 12th, after Franks told me.

Q. Answer the question.—A. Before I came in there I didn't know.

Q. Do you remember whether or not I asked you in questioning today whether you knew at any time how many employees Franks Brothers had?—A. I couldn't say.

Q. You don't remember whether I asked you?—A. You did ask me; yes.

Q. And you know that your answer was you don't know; isn't that correct?—A. Yes. I still say I don't know.

Q. But you have changed your mind since then, haven't you?—A. I didn't change my mind.

* * *

[97] By Mr. GORDON:

Q. Now, Mr. Lerman, will you tell us again what was said by you and by Franks when you met?—A. I had asked them for collective bargaining and I told them that now is the time, that everybody is coming to collective bargaining and they should be no exception, and instead of going around and soliciting cards and instead of going around and have people—have dissension in the shop, the best thing is to come to an understanding with the union and have this thing settled.

Q. And you told him about the advantages that would be secured; is that right?—A. What advantages?

Q. The advantages the company would get by signing up with the union.—A. I told him that he would have no trouble, they would have a business agent handle their affairs.

Q. And did you tell him how long Mr. Hascall had been getting application cards signed from employees of Franks Brothers?—A. Did I tell them?

Q. Yes.—A. No; I didn't tell them.

Q. How long had Mr. Hascall been securing authorization cards from Franks Brothers Company?—A. I couldn't say exactly how long. [98]

Q. Do you mean to say that you don't know when the organization drive at Franks Brothers started?—A. I don't.

Q. As a matter of fact, you didn't know much about the union conditions or the union picture in regard to Franks Brothers before you went down to see Franks Brothers, did you?—A. That is right.

Q. And the only reason you went down there was because you thought that you would be able to have more friendly relations with Franks Brothers due to the fact that you knew them?—A. That is correct.

Q. And you didn't take any care to find out what the situation was in regard to cards or anything when you first went down there, did you?—A. On the first meeting, no.

Q. All you did know was that the union had been organizing and that is all; isn't that correct?—A. That is correct.

Q. And if you answered the Trial Examiner a few minutes ago and said that at that first meeting you told him that you had a majority of the employees, do you want to change that testimony now?—A. I don't want to change that testimony. [99]

Q. Didn't you just testify that at the first meeting the only thing you knew was that there was organization going on? Didn't you tell me that?—A. Yes.

Q. Just a few seconds ago?—A. Yes.

Q. And didn't you also say a few seconds ago that that is all you asked the Franks?—A. Yes.

Q. You don't want to change your testimony?—A. I don't want to change my testimony on that answer to the Examiner, not at all.

Q. Do you even know what the Examiner asked you?—A. He asked me whether we have a majority or whether—I told him I had a majority of signed cards.

Mr. GORDON. Let me have that read back.

(Answer read.)

Q. When did you tell him that you had a majority?—A. When I talked to Mr. Franks.

Q. And that is what the Examiner asked you?—A. Yes.

Q. And he asked you whether you told Mr. Franks you
[100] had a majority at that first meeting on June 12?—A. Yes.

Q. And you answered the Trial Examiner how?—A. Yes.

Q. But you answered to the contrary to me a few minutes ago, didn't you?

Mr. HOBAN. I object.

Trial Examiner GUFFEY. Overruled.

Q. Didn't you?—A. I did not.

Q. At that first conference on June 12th you didn't even know whether you had a majority, did you?—A. I did because Hascall told me he has a majority of cards and I took Hascall's word for it.

Q. What do you mean by a majority, or all the cards you had down in the union office?—A. A majority of the people working in Franks' that they had signed cards for the union. That is the statement I took from Hascall.

Q. Didn't you just testify that all Mr. Hascall told you was that he had been organizing the employees of Franks Brothers and he had a lot of cards?—A. I didn't say that.

Q. Did you and Mr. Hascall talk over—now, bear in
[101] mind this is the first visit on June 12—did you talk over with Mr. Hascall how many cards he had?—A. He told me he has a majority of the shop and I took Hascall's statement for it.

Q. You remember that word "majority" very clearly now, don't you?—A. I do.

Q. And you will never forget it, will you?—A. I always remember that.

Q. Now let us get to that second conference at the Bradford. You tell us in your own words what happened at that conference.—A. At that conference Mr. Franks requested me to leave him alone until Christmas because he don't know what he is going to do with his business, and I told him very briefly that we can't let it go until Christmas, that we will proceed to the National Labor Board to certify the cards and ask for an election.

Q. And that is all that was said about cards?—A. It wasn't just said in a few words. We spoke generally.

Q. I realize that, but that was all that was said about cards in the second conference; isn't that right?—A. That is all that was said. He asked me, "Are you sure you are going to win the election?" I said, "I have a majority of cards."

Q. As a matter of fact you said it didn't make any difference whether you would win it or not because you would give them trouble next year if you didn't win it?—A. I didn't say that. [102]

Q. Tell us again what you told Mr. Franks—A. We were proceeding to the National Labor Relations Board for an election and we feel we have a majority.

Q. You feel that you have a majority?—A. Yes.

Q. You weren't sure of that even then, were you?—[A pause.] Were you?—A. I was sure if we have it.

Q. Had you ever seen the payroll of the Franks Brothers at that time?—A. I did not see the payroll.

Q. Between the time of your first conference with Mr. Franks and the second conference at the Hotel Bradford did you have any talk with Mr. Hascall about the number of cards you had?—A. I told Mr. Hascall to go ahead and sign as many more cards as he possibly can.

Q. And you knew you needed more cards then?—A. I didn't say that.

Q. You told him to sign up some more cards?—A. Yes.

Q. You didn't have a majority at that time?—A. I did. I took Hascall's statement that he had a majority but he can sign some more cards. Nothing wrong in that, is there? [103]

Q. When did Mr. Hascall show you the cards?—A. When did Mr. Hascall show me the cards?

Q. Yes.—A. I don't know.

Q. But he did show them to you?—A. Some cards I saw.

Q. You didn't testify that way a few minutes ago, did you?—A. I said that I didn't have the cards. I didn't see them, but some cards I saw.

Q. Didn't you testify both on direct——A. Yes.

Q. Didn't you testify on cross-examination by me in response to my questions that you had never seen the cards at any time?—A. I didn't say the cards. I said some cards.

Q. Now your testimony is that you saw some cards?—A. I don't know whether they were Franks' cards or someone else's cards. I saw some cards in Hascall's possession.

Q. Now you say you are not sure whether they are Franks Brothers' cards?—A. I mean Hascall has a number of cards. He has them in his hand.

[104] Q. And you don't know whether you did or didn't see any cards?—A. I never saw any cards.

Q. I will ask you once more to tell us what happened at the conference at the Bradford.—A. Well, I have repeated what happened at the conference at the Bradford. If you ask me a thousand times I will give the same testimony.

Q. Answer it once more.—A. He asked me to postpone to Christmas and I said it can't be done, and I told him we will proceed to the National Labor Board and ask for an election.

Q. And that is all?—A. That is all.

Mr. GORDON. No further questions.

Redirect examination by Mr. HOBAN:

Q. Did you repeat at the second conference at the Bradford Hotel that you had a majority of the employees?—A. Yes; I did.

Q. Did Franks tell you whether or not he doubted that you represented a majority of the people there at that conference at the Bradford Hotel?

Mr. GORDON. Just a minute. I object. It is a leading question. Let us have the witness's testimony.

[105] Trial Examiner GUFFEY. Sustained.

By Mr. HOBAN:

Q. What was the discussion which you had with Franks about the majority?—A. At the second conference as far as Franks is concerned I didn't discuss the majority at all. I told him that—he told me to postpone it to Christmas. I told him I can't do it; we will proceed to the National Labor Relations Board; that we have a majority of cards. That is what I told him.

* * *

[107] RE-CROSS-EXAMINATION

* * *

Q. Can you tell us how many times you talked to Mr. Hascall about the Franks Brothers' case?—A. How many times? I can't tell you, but I spoke to him and he told me he is signing up cards and I should go out and see Mr. Franks, and I did go out and see Mr. Franks once or twice. I told Mr. Hascall I didn't accomplish anything with Mr.

Franks and we should have to proceed to the National Labor Relations Board.

* * *

DIRECT EXAMINATION [110]

* * *

Victoria Rizkallah, Board witness.

DIRECT EXAMINATION

* * *

By Mr. HOBAN:

Q. Miss Rizkallah, were you ever employed by Franks Brothers Company?—A. Yes.

Q. And were you employed by Franks Brothers Company in 1941?—A. Yes.

Q. What was your job with Franks Brothers Company?—A. Well, most of the time I did fronts and buttonholes and I did bar tacking at times.

Q. Are you working there now?—A. No.

Q. How long is it since you have been out of there?—A. I think it is about four and a half months. [111]

Q. While you were employed there did you join any union?—A. I did.

Q. Did you attend any meeting of the union?—A. Yes.

Q. What union was it?—A. I think it was the CIO.

* * *

Q. Who was your supervisor?—A. Mr. Yosper.

Q. Harry Yosper?—A. Yes.

Q. Did Mrs. Yosper have anything to do with your work?—A. What do you mean?

Q. Did Mrs. Yosper ever give you any instructions?

Mr. GORDON. I object.

Q. Concerning your work?

Mr. GORDON. I object. The question before was perfectly fair—did she have anything to do with her work?

Mr. HOBAN. Upon the witness's request for an explanation, Mr. Examiner.

Trial Examiner GUFFEY. Overruled. He may clarify his question.

Q. Do you understand my question now?—A. Yes.

Q. Can you answer it?—A. Yes. She did give me instructions as to how to do it.

Q. Who was working next to you in the shop?—A. Rose Pinto.

Q. Did Rose Pinto attend that meeting that you refer to?

Mr. GORDON. I object.

[113] A. Yes.

Q. Did you have any conversation with anyone in the shop concerning that meeting?—A. Just the girls that was with me, Rose Yazbek and Rose Pinto.

Q. Was there any discussion in your presence in the shop of that meeting after it was held?—A. Yes; there were numerous discussion.

Q. Did any officials of the company participate in any of those discussions in your presence?

Mr. GORDON. I object, because it calls for a conclusion.

Trial Examiner GUFFEY: Sustained.

By Mr. HOBAN:

Q. Did either Harry Yosper, Mrs. Yosper, or Mr. Franks engage in any discussions about that meeting in your presence?—A. Yes.

Q. Who did?—A. Mrs. Yosper and Mr. Yosper.

Trial Examiner GUFFEY: Is that Harry Yosper and Minnie Yosper?

The WITNESS. Yes.

By Mr. HOBAN:

Q. How long after the meeting?—A. I think it was the very next day and several days later.

[114] Q. On the next day what did Harry have to say about the meeting?—A. Well, I don't recall just what he did have to say the next day, but during that course of weeks he did accuse some of the girls of being union leaders.

Q. What girls did he accuse of being union leaders?—A. Rose Pinto.

Q. Any others?—A. Not that I know of.

* * *

Q. Just give us the conversation as well as you can that took place in which Mr. Yosper participated.—A. There had been some discussion and some debating about the union before then and while they were talking

[115] Mr. Yosper accused Mrs. Pinto of being a union leader and he told her that if the union had come in on a Friday that the factory would close and that he would have a job in Boston on Monday.

* * *

By Mr. HOBAN:

Q. I show you Board's Exhibit 7 and ask you whether you saw that posted in the shop?—A. Yes, I did.

Q. Was it posted before or after this conversation that you have been telling us about?—A. I think it was after.

Q. You saw it after anyway?—A. Yes.

* * *

Q. When was the election to be held in reference to the date that you heard the conversation?—A. I don't exactly remember. It might have been some time after. [116]

* * *

By Mr. HOBAN: [117]

Q. Do you know whether or not the Friday to which Harry was referring was the election date?—A. I don't.

Q. You don't? You don't know whether that was the date?—A. No; I don't.

Q. Do you remember what day of the week the election was supposed to be held?

Mr. GORDON. I think we can stipulate it was on a Friday. If the Examiner please, I don't see why we go through a lot of immaterial questions. The evidence is clear that it was on a Friday. It doesn't make much difference if this girl remembers when it was.

* * *

By Mr. HOBAN: [118]

Q. You stated that Mrs. Yosper participated in some conversation either with reference to the union or with reference to the meeting. What was that conversation?—A. There was quite a bit of conversation—I wouldn't call it exactly conversation, it was mostly quarreling and arguing with the employees about whether or not they had signed, and different discussions, and so forth. It wasn't all about the election or any particular subject. It was mostly on talk of the union.

Q. Did Mrs. Yosper say anything in your presence about signing with the union?—A. Yes.

Q. What did she say about it?—A. She asked me if I had signed and I told her I hadn't. [119]

Q. What did she say?—A. And she said, "I was just wondering," or something to the——

Q. Do you recall when that took place, that conversation?—A. It was during the week of the vacation. Mrs. Yosper had been away at the time and after she returned she had asked me if I had attended the union meeting and I says to her No, and one day she come back and she said she knew I had been there.

Q. Was that before or after the vacation?—A. That was after all the vacations when she had still been away.

Q. Where were you when this conversation took place?—A. It was the first thing in the morning in the factory. We weren't doing any work.

Q. You had just come in to work?—A. Yes.

Q. Any other employees present when that happened?—A. Well, yes; I think there were some.

Q. Do you remember any of their names?—A. No; offhand I don't know just who was there.

* * *

[134] CROSS-EXAMINATION

* * *

Q. Now, you testified that you joined the union; is that right?—A. Yes.

[135] Q. Do you know what union it was?—A. Yes.

Q. What union?—A. Amalgamated Clothing.

Q. Clothing Workers?—A. Yes.

Q. By the way, since you testified this morning did you talk with anyone about your testimony here?—A. No; I haven't.

Q. Now, how did you join the union?—A. Miss Yazbek and Mr. Hascall and Mr. Salerno came to the house and Miss Yazbek spoke to me about why they had come and she told me her view of the matter and I had mine, so they offered the card and I signed my signature to it.

Q. Did you read the card?—A. Yes; I did.

Q. And what were you doing by signing the card?—A. I suppose——

Q. Do you know or don't you know what you were doing when you signed the card?—A. I knew what I was doing.

Q. What were you doing?—A. I was joining the organization.

* * *

[136] By Mr. GORDON:

Q. Now, I show you this card marked Respondent's Exhibit 1 for identification and ask you if you recognize that?—A. Yes.

Q. Is that your signature?—A. Yes; it is.

Q. The date is not in your handwriting, is it?—A. No.

[137] Q. Does that date help you place the time of signing it?—A. Yes.

Q. Was it on that date?—A. It must have been.

Q. How do you know it must have been? Do you have any recollection by looking at that date that you signed it on that date, or do you just don't know about it?—A. Well, if the date is there it must have been dated. I signed it.

Q. You didn't put on the date, did you?—A. No.

Q. And that is the only reason you say if the date is on there that must have been the time you signed it; is that right?—A. Naturally.

Q. But you don't have any recollection of when you signed it; is that correct?—A. No.

Q. By signing this card did you expect that you would be given an opportunity to vote by secret ballot, conducted by the Government on whether you wanted this union to bargain for you?—A. When I signed that card I knew that it meant that the workers would have a fair trial and would have to work under better favorable conditions.

Q. And did you expect by signing the card that you would be given a further opportunity to vote in secret ballot on whether or not you wanted the union to represent you?—A. Yes. [138]

Mr. GORDON. I offer it in evidence as Respondent's Exhibit 1.

Trial Examiner GUFFEY. Any objection?

Mr. HOBAN. No objection.

Trial Examiner GUFFEY. It may be admitted as Respondent's Exhibit 1.

(Whereupon the document above referred to previously marked Respondent's Exhibit 1 for identification was received in evidence.)

* * *

Q. When did you go to the last meeting?—A. It was after they put the bulletin up. No; it was before they had the bulletin up that they were going to have an election. [140]

Q. So that the last meeting you attended of the union was before the bulletin was posted announcing the election; that is correct, isn't it?—A. I think so.

Q. Did you say that Mr. Yosper talked to you about the union?—A. Yes, continually. [141]

Q. Well, starting when?—A. The minute they found out the union was in there that is all they harped on.

* * *

Q. Now, just what was it that Mr. Yosper said to you?—A. When?

[142] Q. Well, the first time he talked to you about the union.—A. Oh, there were numerous things said. They might not have been said to me but I was there when they were said.

Q. We first want to now what was said to you?—A. I don't remember exactly what he said.

Q. Tell us it to the best of your recollection. [A pause.] Don't you have any recollection?—A. Oh, I know I did talk with him at one time concerning—well, I had been scolded for some work I did and I didn't feel as though I had to be scolded for it and I thought my work was correct, and I went to him for an explanation of why I had been scolded and abused by his wife, and he told me there was nothing wrong with my work, that my work had been satisfactory. Then I asked him why there had been the unfavorable remarks by his wife and unreasonable prejudice she had against me—well, the conversation drifted. I don't know what his explanation was. The conversation drifted and he told me that she didn't think much of the union, and she had joined the union when she was quite young and she didn't seen any benefit in it.

Q. Did you mention the union first?—A. No, I never mentioned the union to either of them.

* * *

[144] Q. And the time you said he talked to you about the union he wasn't harsh with you either, was he?—A. No, he never was.

Q. He just told you what his opinion was about the union?—A. Yes.

Q. And I gather from what you say he didn't like the
[145] union?—A. Well, he didn't believe in it.

Q. Did he try to make you change your mind about the union at all?—A. Yes, he did several times; not only me but the rest of the employees.

Q. That is, he didn't like it and he didn't want you to like it and he tried to convince you; is that correct?—A. Yes.

* * *

[149] Redirect examination by Mr. HOBAN:

Q. When you signed the card you were working in Franks Brothers at that time, weren't you?—A. Yes.

Q. When you signed the card did you think you were becoming a member of the union?—A. Yes.

Q. Is that what you wanted?—A. Yes.

* * *

LOUIS HASCALL, Board witness. [184]

DIRECT EXAMINATION

* * *

By Mr. HOBAN:

Q. Mr. Hascall, are you connected with the Amalgamated Clothing Workers Union?—A. Yes, sir.

Q. In what capacity?—A. General organizer. [185]

Q. Were you a general organizer of that organization in 1941?—A. Yes, sir.

Q. What district do you work out of?—A. I work out of the New York office but I am stationed in the New England District, not permanently; sometimes I go out of the district.

Q. How many business offices has the Amalgamated Clothing Workers in Boston?—A. Three.

Q. And is there an international office there in Boston?—A. There is one; yes.

Q. And under whose supervision is that office?—A. Joseph Salerno.

Q. And then there is a Boston district office?—A. Yes; a Joint Board office and there is another office.

Q. Which office do you work out of?—A. I don't know how they explain it because I do business agent work out of the Boston Joint Board, I do organizing out of the other office. I mean I have been doing business agent work along with the organizing.

Q. You work out of both of them?—A. Yes.

Q. In connection with your work did you contact any [186] employees of Franks Brothers Company?—A. Yes.

Q. In 1941?—A. Yes.

Q. Did any other representative of your organization while you were working on the matter contact employees of Franks Brothers Company?—A. Yes.

Q. Who was that?—A. Guy Salerno.

Q. Is Guy Salerno the son of Joseph Salerno?—A. That is right.

Q. How did you happen to contact employees of Franks Brothers?—A. How did I happen to go on the job?

Q. Yes.—A. Well, Mr. Salerno—I don't mean this one——

Q. Joseph Salerno?—A. Joseph Salerno called me in the office and spoke to me in regard to Franks Brothers and told me he had two organizers there, one a full time organizer by the name of Jenkins, and his son was working as a part time organizer.

Mr. GORDON: May we have this conference identified, when it took place, before any testimony goes in about it?

[187] By Mr. HOBAN:

Q. About when was that conference, approximately, do you know?—A. Approximately the first part of May, I believe. I don't want to be sure.

Q. Well, the record shows that an election was scheduled to be held on July 25th.—A. That is right.

Q. At the Franks Brothers plant?—A. That is right.

Q. About how long before that scheduled election was this conference with Mr. Salerno?—A. I think about ten weeks.

Q. And as the result of your conference with Mr. Salerno what did you do?—A. Mr. Salerno suggested to me that I should go into the district and check it and see if we had all the cards that could be signed; that the boys claimed they had a majority and I should check up first and be sure we had a majority, and if not, secure the majority, a substantial majority.

Q. What did you do?—A. I went into the district with Mr. Salerno, Jr.

Q. Guy Salerno?—A. Guy Salerno, and went over the cards with him, went over all the information we had from

[188] them. I found he had a majority, but still there were a few more people that we could get, which we did do. We visited a number of homes and signed up a number of additional workers, which I think the records will show were signed in the latter part of May.

Q. After you had signed up these other people what other steps did you take?—A. When I went as far as I thought we could go, I went back to Mr. Joseph Salerno and reported to him that we had went as far as we could go, it was time to either negotiate or petition for an election.

Q. And then what did you do?—A. We discussed about who would be the proper man to negotiate, to try to negotiate with the firm and we come to the conclusion that Frank Lerman should be the man.

Q. And after this was decided did you take any steps?—A. It was decided that I should go to Lerman and speak to Lerman about it and he should take steps to see if he could negotiate with the firm.

Q. Did you go to Mr. Lerman?—A. Yes; I went along with Guy Salerno.

Q. And when you and Guy Salerno went what did you tell him?

Mr. GORDON. I object until we have this conference identified, and find out all the detail of who were present.

Mr. HOBAN. All right.

By Mr. HOBAN: [189]

Q. Where was the conference held?—A. It was held in Mr. Lerman's office, 864 Washington Street.

Q. When was it held?—A. I couldn't say the exact date. Some time the latter part of May, I believe. It might have been, though, the first part of June, along about that time.

* * *

Q. What was your conversation with Mr. Lerman concerning Franks Brothers?—A. I spoke to Mr. Lerman and told him that I had investigated and worked on Franks Brothers and that we had gone as far as we could go, and it was time to either negotiate with the firm or petition the National Labor Relations Board, and I would suggest that he try to contact the firm because we knew that he had some friendly connections with Mr. Franks. [190]

Q. Is that all you remember of the conversation?—A. That is about all that amounted to anything.

Q. Did you have any talk with Mr. Lerman about whether you had a majority or not?—A. Well, I told him that we had went as far as we could go and that we had well over the majority.

* * *

Q. Is there any practice among representatives and organizers of Amalgamated as to how a request for bargaining representation shall be made?—A. Yes. [191]

* * *

By Mr. HOBAN:

Q. What is the practice of the Amalgamated?—A. The practice of the organizers is, when they have a majority of the plant sign up to go then and either negotiate or petition for an election, but in no case do we do any petitioning for an election or arbitrate unless we have a substantial majority of the shop.

Q. After you had this conversation with Mr. Lerman did he ever tell you whether he had followed out your suggestion or not?—A. After the conference with him? [192]

Q. Yes.—A. Yes.

Q. About how long after you had the conference with him?—A. I would say about a week or ten days.

Q. What did he say?—A. He told me—explained to me that he met the firm but he didn't make any headway to speak of; he expected to talk to them later.

Q. Is that all he had to say?—A. That's all.

* * *

[193] Q. Did he ever report back to you after he met the company again?—A. Yes.

* * *

[194] Q. I show you Board's Exhibit 9 for identification and ask you whether that is the petition which you filed with the Labor Board?—A. That is.

Q. And the petition states that it was filed June 19, 1941; is that correct?—A. Yes, sir.

Q. In relation to June 19, 1941, when was it that you spoke to Mr. Lerman concerning his second conference with the company?—A. It was near this date. I couldn't just remember just what date it was, but it was right near this date.

Q. Was it before or after you filed a petition?—A. Before I filed the petition.

Q. And where did the conference take place?—A. It took place in my office in the Boston Joint Board.

Q. Who else was present besides you and Mr. Lerman?—A. There was no one present.

Q. What was the conversation?—A. I called Lerman on the phone from the switchboard to come in my office, and when he came in I asked him what procedure he had

[195] taken and how far he had went with Franks Brothers' case. He told me he had had a second conference and that he hadn't made headway and that he would recommend that we go ahead and file a petition for election in the Labor Board.

Q. Is that all he told you?—A. He told me that the firm—he thought the firm was stalling, that they had spoken to him something about putting it off until Christmas and he thought they were stalling.

* * *

[215] CROSS-EXAMINATION

* * *

Q. Now, you know what the words, "a question affecting representation" mean, don't you?

Mr. HOBAN. I object, Mr. Examiner.

Trial Examiner GUFFEY. Overruled.

A. Read the question.
(Question read.)
Yes.

By Mr. GORDON: [216]

Q. And will you tell us what you believe it to mean?
Mr. HOBAN. I object.
Trial Examiner GUFFEY. Overruled.
A. Well, I believe it to mean that you doubt whether I have the cards actually signed.

By Mr. GORDON:

Q. And when you allege as an organizer and representative of the Amalgamated Clothing Workers that there is a question affecting representation of employees of a particular company, what you are saying is that there is a doubt as to whether or not the union represents the majority of the employees or not; isn't that correct?

• • •

A. There is a doubt in your mind but not in the union's [217] mind.

Q. You mean that there is a doubt at least existing between the union and the company as to whether or not the union represents a majority of the employees; isn't that true? Isn't that what you are saying?—A. There is no doubt in my mind. There may be a doubt in yours. I can't speak your mind, whether there is a doubt or not.

Q. But you recognized when you said that that there is a doubt concerning the question whether or not the union represents a majority of the employees; isn't that true?

Mr. HOBAN. I object. The witness has answered that three times.

Trial Examiner GUFFEY. Objection sustained. Let me ask you this question, though. Clarify your previous answer by saying what you mean by "my mind and your mind."

The WITNESS. Well, my mind would naturally be the organization that I represent and his mind would be the Franks Brothers that he represents.

By Mr. GORDON:

Q. In other words, when you filed this petition you recognized that there was a doubt between two parties, one of those parties had an honest doubt as to whether

the union represented a majority of the employees; isn't
[218] that correct?—A. No, sir.

* * *

[244] Q. Now, when you talked with Mr. Lerman is it true that substantially what you said to him was that you had completed your organization drive there and that you felt you could win an election if you had to go into one?—A. I told him—I didn't tell him we completed the drive,
[245] no. I told him that we had a substantial majority, that we could win an election if we went into one, but I didn't tell him we were not going to sign any more.

* * *

[263] Q. At any rate, you signed the election agreement on that day, July 3d, is that right?—A. The record proves it.

Q. You did sign it at the time of the conference?—A. Yes.

Q. And you recall I didn't sign it because I was to wait until Dr. Myers had made a check of the cards and the pay roll of the company and told us that in his opinion there was sufficient to warrant an election being held?—A. That was your argument, the reason you didn't want to sign.

Q. And I didn't sign it at that time for that reason?—A. That is right.

* * *

[265] Redirect examination by Mr. HOBAN:

Q. Now, Mr. Hascall, I show you Board's Exhibit 10 for identification and ask you whether that is the card of Rose Yazbek that you testified you saw signed?—A. Yes.

Q. And is that the card to which you were referring in your testimony under Mr. Gordon's questioning?—A. Yes.

Mr. HOBAN. I offer it as Board's Exhibit No. 10.

Mr. GORDON. No objection.

Trial Examiner GUFFEY. It may be admitted.

(Whereupon the document previously marked "Board's Exhibit No. 10" for identification was received in evidence.

* * *

[266] Q. Directing your attention to the conference of July 3d at the Labor Board offices in which there was some talk of a check being made, I will ask you what it was that Mr.
[267] Gordon wanted done before signing the agreement?—A. He wanted the payroll record brought in. He suggested

they bring the payroll record in and we would check the cards against the payroll record, and if it showed we had a substantial majority we would go ahead with the election.

Q. Now, you testified in your cross-examination under Mr. Gordon that it was your recollection that the check was only to be made to determine whether the union had a substantial number. Was it to check whether there was a substantial number of cards or whether the union had a majority of cards?—A. Naturally to see if we had a majority. A substantial number would be the majority.

Q. And that is what you understood when you were answering Mr. Gordon's questions?—A. Yes, sir.

* * *

Re-cross-examination by Mr. GORDON: [270]

Q. You have had a great deal of experience in petitioning for elections before the Labor Board, haven't you, Mr. Hascall?—A. I wouldn't say a great deal.

Q. Well, you have had a lot of experience in connection with the Labor Board?—A. I never held an election of the Labor Board.

Q. You never held one?—A. No.

Q. Have you ever been involved in one? Have you ever requested one?—A. Requested one. I never was in an election of the Labor Board.

* * *

GUY J. SALERNO, Board witness. [279]

DIRECT EXAMINATION

* * *

By Mr. HOBAN:

Q. Are you connected with the Amalgamated Clothing Workers Union?—A. I am.

Q. In what capacity?—A. Part time organizer.

Q. Were you in 1941 a part time organizer?—A. I was.

Q. Are you the Guy Salerno who filed the second amended charges in this case?—A. I was. [280]

Q. Did you also file the first amended charges?—A. Yes.

Q. In connection with your activities as part time organizer under whose supervision do you work?—A. Joseph Salerno.

Q. And Joseph Salerno is your father?—A. Yes.

Q. And his position with the Amalgamated is what?—A. Regional Director for the Amalgamated Clothing Workers Union.

Q. In the year 1941 did you discuss the Amalgamated Clothing Workers with employees of Franks Brothers?—A. I did.

Q. Did you undertake the organize the employees of Franks Brothers?—A. I did.

Q. When did you first start to speak to the employees with reference to the union?—A. Some time in January. The job was bestowed upon me that I should organize the employees of Franks Brothers.

Q. Who assigned you to that task?—A. Joceph Salerno.

[281] Q. And did you speak to the employees after that?—A. I did.

Q. Did you hold any meetings of employees?—A. I did.

Q. How many meetings did you hold?—A. Various small meetings—I mean intimate meetings, and one general meeting.

Q. Now, the record shows that an election was scheduled for July 25, 1941. Was the general meeting held before or after that election?—A. The general meeting was held two days before the scheduled election.

Q. Did any employees of Franks Brothers attend?—A. There were many employees of Franks Brothers at that meeting.

* * * *

[283] By Mr. HOBAN:

Q. During the organizational campaign of Franks Brothers did you ask any of the employees to join the Amalgamated?—A. Practically all of them.

Q. Did you ask any of them to sign any applications for membership in the organization?—A. Let me qualify myself again, by the way. When I said, "Practically all of them" I meant of the members that we had signed—I will say that—of the employees of the plant. We contacted 80 per cent of them.

Q. As a result of your contacting them did any of them sign cards in the Amalgamated?—A. They did.

Q. Were any of those cards signed in your presence?—A. Most all of them; all except one.

Q. During what period were cards signed?—A. From January 2 and inclusive of June 9th.

Q. Do you remember the name of the last employee that was signed?—A. I do.

Q. What was the name?—A. Joseph Calarese.

Q. Do you know the date on which Cararese signed his card?—A. June 9th.

Q. What year was that?—A. 1941. [284]

Q. Now, Mr. Salerno, I hand you a pack of cards which have been marked Board's Exhibit 12–1 to Board's Exhibit 12–45, and ask you whether those cards were signed by employees of Franks Brothers?—A. They are the cards, but there are other cards also.

Q. Other cards that were signed by the employees?—A. Yes.

Q. Now, with reference to those which I have handed you, namely, Board's Exhibits 12–1 to 12–45, were any of those cards signed in your presence?—A. All of them.

Q. Were any of the cards signed in your presence while someone else was around?—A. Well, yes.

Q. Who was in charge of this organizational work?—A. I was.

Q. Were you assisted by anyone?—A. I was.

Q. Who?—A. Well, at various times I was assisted by Mr. Jenkins and then by Mr. Hascall.

Q. Did Mr. Hascall replace Mr. Jenkins?—A. He did; although Mr. Jenkins spent more time with me than Hascall.

Q. Was Hascall present when any of these cards were [285] signed?—A. He was.

Q. Now I show you Board's Exhibit 12–6 for identification and ask you where that was signed.—A. This is Rose Blake. This was signed at her home by Mr. Jenkins. This is the only card that I didn't witness.

Q. You only witnessed 44, then, out of the 45 cards?—A. 44; yes.

Mr. HOBAN. Mr. Examiner, I offer in evidence these cards as Board's Exhibits 12–1 to 12–45, inclusive, and I am supplying Mr. Gordon with photostatic copies of those cards, and have no objection to his taking them from the hearing room for any purpose he may wish, but the copies which I have given him are the duplicates which I expect to be in the record before the close of my case.

Mr. GORDON. Did you state how many cards there were in the exhibit that you are offering?

Mr. HOBAN. There are 45 cards in Board's Exhibit 12–1 to 45. They have been marked.

Mr. GORDON. Is that inclusive of the original application cards? For example, is the original application card of Victoria Rizkallah included in Board's Exhibit 12?

Mr. HOBAN. No. Rizkallah's and Yasbek cards are already in evidence and you haven't got in that pack
[286] of 45 photostatic copies of those, so I have no objection to your withdrawing those two.

Trial Examiner GUFFEY. In other words, there are now in all forty-seven cards in evidence?

Mr. HOBAN. That is correct.

Trial Examiner GUFFEY. Or there will be when this Exhibit 12 is introduced. Any objection?

Mr. GORDON. No objection.

Trial Examiner GUFFEY. They may be received in evidence as Board's Exhibits 12–1 to 12–45, inclusive.

(Whereupon the the documents above referred to were marked "Board's Exhibit 12–1 to 12–45," inclusive in evidence.)

* * *

[287] Q. Have you any particular reason for remembering the date of June 9, 1941?—A. I have a very good reason. I was born on the following day; June 10th is my birthday and we had planned a celebration, Hascall and I.

Q. On your birthday you had all those cards signed?—A. Yes. That was the conclusion of the case as far as organizational work.

Q. Where did you get Rose Blake's card?—A. Mr. Jenkins gave it to me. I wasn't able to go with him that night. I had something else to do.

Q. At the time Mr. Jenkins gave you that card had it been filled out?—A. What's that?

Q. At the time Mr. Jenkins gave you the card had it been filled out?—A. Yes.

Q. Was the signature that now appears on it on the card?—A. Yes.

Q. Prior to the time the employees signed those cards did you make any explanation to them?—A. I did.

Q. What explanation did you make?—A. I explained
[288] to them if they signed the cards they would become members of the union in most cases. Sometimes I had visited the people so often they knew me by my first name or by my middle name and they took it for granted why I was there and who I was and what I represented.

* * *

By Mr. HOBAN: [298]

Q. Mr. Salerno, what official or agency of the Amalgamated Clothing Workers usually does the collective bargaining?—A. The Regional Director, unless he is so busy that he can't handle it himself, and he designates someone else.

Q. The Regional Director of what?—A. Of the Amalgamated Clothing Workers. [299]

Q. That is Joseph Salerno, your father?—A. That is right.

Q. How does the Boston Joint Board tie into collective bargaining by the Amalgamated?

Mr. GORDON. Objection. There is no evidence that it does tie in.

Mr. HOBAN. Mr. Hascall gave some testimony this morning.

Mr. GORDON. If he did, then it is repetitious.

Trial Examiner GUFFEY. Objection overruled.

A. The Boston Joint Board is an affiliate of the national organization. The national organization is divided into districts. The New England district is one of them. Because conditions warrant experts in the field, as a rule the Amalgamated in arbitrations, negotiations, designates its best men, whom they consider best for the job. The local representatives that are elected, the business agents, are mainly elected to handle the minor complaints in the shop, to perhaps draw up small agreements with small shops that don't amount to much, where there are not big issues involved, but if there are any issues, whether they be legal or pertinent to the trade, if they are important the Regional Director will take them up.

By Mr. HOBAN: [300]

Q. Personally?—A. Personally.

Q. When the union first approaches a company to request collective bargaining, who usually handles it?—A. The Regional Director usually handles it.

Q. And when he doesn't handle it who handles it?—A. When he doesn't handle it, it is a designated representative. He can appoint one of the business agents. He will say, "Go up and take care of this situation," or he will say to one of the national organizers, "You take care of this situation," and it is done that way. But if he can do it himself, he will. But he never calls a duly appointed representative or elected representative of the Amalga-

mated on any negotiation mission unless they have something definite.

Q. Mr. Lerman gave some explanation of the function and the set-up of the Boston Joint Board. Will you describe the way the Boston Joint Board fits into the Amalgamated organization?—A. You mean in this state?

Q. Yes.—A. The Amalgamated in this state is composed of various locals throughout the state which in turn are subordinated—no; I will strike that. I will qualify myself. They are not subordinated; they are part of the Boston Joint Board. Each local sends a certain number
[301] of representatives to the Joint Board which acts in supreme authority, in comparison to our congress.

Q. Whose congress are you speaking of?—A. The United States of America. They only have jurisdiction of local affairs.

Mr. GORDON. Who is "they," please, the executive board?

The WITNESS. It only has jurisdiction in local affairs.

Trial Examiner GUFFEY. Who is the executive board? That is the first time you have mentioned that here.

The WITNESS. Pardon me. The Boston Joint Board.

By Mr. HOBAN:

Q. Is there also an executive board in each local?—A. There is.

Q. How is the Boston Joint Board made up?—A. It is made up of members of the executive board of each local. I think there are seven or six.

Q. There are six or seven members in each executive board?—A. Each executive board of each local.

Q. And there are how many locals in Boston?—A. Between 12 and 17 locals right now; not in Boston; the state of Massachusetts.

Q. That would be approximately 84 persons?—A. There are 91 people, I think on the Joint Board at
[302] this time, 91 or 104, I don't know which.

Q. Does the Joint Board have full time employees?—A. It has certain full time employees, namely, the business agents and one organizer.

Q. And do its agents of the Joint Board carry on collective bargaining?—A. In some cases, yes, minor cases, but collective bargaining is delegated to the general office unless designated otherwise.

Trial Examiner GUFFEY. That clears my mind as to the relation between the Boston Joint Board and the local

union. I would like for you to state the relationship between the Boston Joint Board and the over-all organization known as the Amalgamated Clothing Workers of America, not with relation to the locals but with relation to the parent of it.

The WITNESS. It is very simple. The same relation exists as in the various locals of the Boston Joint Board. It is on a larger scale. The various joint boards are related to the general executive board, the general office in New York, in the same capacity.

By Mr. HOBAN:

Q. How many people are on the national executive board?—A. I think it is 27.

Q. And where are they drawn from?—A. From the various districts.

Q. And are they members of the Joint Board within their various jurisdictions?—A. They are. [303]

Q. What do you call that top board, a joint board of an executive board?—A. The National Executive Board.

Q. And does the executive board carry on business of the Amalgamated Clothing Workers of America?—A. It does, to which Joseph Salerno is responsible.

Mr. HOBAN. That is all I have from this witness.

Cross-examination by Mr. GORDON:

Q. Is Joseph Salerno responsible to the Boston Joint Board?—A. No; not directly.

Q. Well, is he responsible indirectly?—A. He is.

Q. In what respect?—A In any democratic organization there are always occasions where the local organizations have recourse to the parent organization.

Q. What you mean is that Joseph Salerno is responsible to the National Executive Board; that is correct, isn't it?—A. Yes.

Q. But he is not responsible to the Boston Joint Board in any way?—A. No. [304]

* * *

Q. You only had one general meeting, didn't you?— [322]
A. One general meeting, yes, that we called.

Q. And that was on July 23d?—A. July 23d, I believe.

Q. And how many did you say were present at that meeting?—A. I didn't say how many were present.

Q. How many were present?

* * *

A. You want to know how many were present at the meeting?

Q. Approximately how many?—A. Oh, I would say about—I think somewhere around forty.

* * *

By Mr. GORDON:

[323] Q. It was on the next day that you requested that the election be called off; is that correct?—A. I think so, yes. On that particular point I am not definitely sure about. If there is some incident that will refresh my memory, perhaps I will remember it. Yes; it was the next day. It was the next day because before the meeting I remember that they were debating the issue whether we should call the election off or not because of certain circumstances that had arisen, one of them being the company didn't post the notice. No. 2, you were supposed to be there a certain designated night at seven o'clock at the Franklin Hotel and you didn't appear. That was another factor. The third factor was that you had promised—not only this was told to me—you had promised the Board that on Monday following the vacations all the employees were going to be back to work and they didn't come back to work on a Monday nor on a Tuesday. I think they may have all been back to work on Wednesday or Thursday. And all those factors plus the most important factor of interference which is in the amended charges, with all these factors put together we decided that the election should be postponed or called off.

* * *

[325] By Mr. GORDON:

Q. Mr. Salerno, you are familiar with the practice in
[326] regard to establishing collective-bargaining agreements, the practice of the Amalgamated, are you not?—A. I am not an expert but I have some idea.

Q. And I suppose you were told by your father or knew from contact with him that it was the practice for the Amalgamated to go out and sign cards and get cards signed by employees of a particular company, and when they felt that the employees would vote for them in an election to ask for bargaining from the employer?—A. Not quite that.

Q. How would you put it?—A. When we had a majority we would talk to the employer and tell him we represented a majority in his plant and if he wanted to bargain with us

he would; if he didn't, go before the State Board or National Board and petition for an election.

* * *

PETER NAFFAH, Board witness. [330]

DIRECT EXAMINATION [331]

* * *

Q. What department did you work in when you worked at Frank Brothers?—A. Pants Department.

Q. Who was your foreman?—A. Harry Yosper.

Q. Did anyone else supervise your work?—A. His wife, Minnie.

Q. Will you describe for us your job?—A. Well, I used to press seams, waistbanks, and files before they were stitched together.

Q. Did you work on an hourly rate or a piecework basis, or what?

Mr. GORDON. Is this material?

A. I was on an hourly rate and later I was put on piecework.

By Mr. HOBAN:

Q. What was Mrs. Yosper's connection with your work?—A. She was giving me the work; telling me what to do, and different lots to do. She gave most of the orders. [332]

Q. And what would Mr. Yosper tell you to do in respect to your work?—A. He very seldom told me anything to do.

* * *

[336]

By Mr. HOBAN:

Q. Now, did you attend that union meeting which Mr. Salerno spoke about?—A. I did.

Q. After you had attended that meeting did you return to work at the plant?—A. Yes; the following day.

Q. Did you on that day have any conversations with either Harry or Minnie Yosper?

Trial Examiner GUFFEY. Just a minute. Salerno testified about several meetings.

Q. I refer to the meeting which occurred a couple of days before the election which was scheduled.—A. Yes.

Q. Did you on the following day have conversation that day?—A. Yes, I did. When I first went in Minnie greeted me as a member of the union.

Q. What did Minnie say?—A. I asked her how she [337] knew. She said she had her own way. I was kind of

surprised and she told me different people that were members. I said, "There is nothing wrong about that; if you want to join the union I guess you could." "I guess you are right," she said, and we talked generally—let it go at that.

Q. Did she name any others? You say she named some others?—A. Joe Bagliere over there and Rose Yazbek and Rose Pinto and Vicky.

Q. Vicky Rizkallah?—A. Yes. I guess that is about all she did mention.

Q. Did you have any conversation with Harry Yosper that day?—A. About quitting time Harry and Joseph Bagliere had some sort of a—well, they were discussing the union. I was walking by so they called me.

Trial Examiner GUFFEY. When was this?

The WITNESS. I think it was the 24th.

Trial Examiner GUFFEY. Was it the same day?

The WITNESS. The same day—Saturday. They were discussing it and I was going by and they asked me to talk it over with them and I said I would, and they started talking about the union and Joe was telling him about the union, and Harry said if the union did get in Mr. Abraham Franks said he would take the contract, the Samson-Crane
[338] contract, away from Franks Brothers, thereby closing down the shop.

Mr. GORDON. Read me that answer. He said something about Saturday.

(Answer read.)

The WITNESS. Did I say Saturday? Thursday.

By Mr. HOBAN:

Q. Was anything else said?—A. No. Joe said he didn't think he could do it because—I don't know where he got his information—someone told him it was against the law to close the shop so abruptly and they had to continue business as usual.

Q. Did you have anything to say during the conversation?—A. No. I just did the listening.

Q. You say they called you over. Do you remember who called you over?—A. I think it was Joe.

Q. Joe Bagliere?—A. Yes.

Q. Did either Harry or Minnie Yosper ever say anything else to you about the union or an election after that day?—A. Well, there was a time when Minnie doubted my working ability and we sort of made a bet, you know, that if I

done a certain amount of work for the morning she would buy me a dinner, and vice versa, so I took her up on it and at the conclusion I come out ahead, and we went down to the Wallaby for lunch, for dinner. As we were in there Guy Salerno come in and asked me if he could have a few [339] words with me, and I excused myself and went out with him. So on the way back there was Minnie, myself, and this other young lady, Anna Fichera, in the car, and Minnie was kind of peeved because Guy come down, and she was angry, and she said, "I don't care what anyone says, if the union does get in I will state right out here now that the shop will be closed."

* * *

By Mr. HOBAN:

Q. When did the conversation take place in Wallaby's restaurant?—A. That wasn't in Wallaby's. It was in the car.

Q. In the car outside of Wallaby's restaurant?—A. I [340] can't seem to remember just when it was.

Q. Do you remember whether it was before or after the conversation which you had with Minnie in the shop?—A. It was after the conversation.

Q. After?—A. Yes.

Q. How long after was it?—A. I couldn't tell you but Guy maybe would remember. I don't remember the date.

Q. Was it more than a month later?—A. Oh, it could have been.

* * *

Cross-examination by Mr. GORDON: [341]

Q. You say Anna Fichera was present at that conversation?—A. Yes, she was.

Q. And Mrs. Yosper and yourself; is that right?—A. That is right.

Q. And that was a long time after the election, wasn't it?—A. I believe it was.

Q. Wasn't it after you had been out sick and come back again?—A. Yes.

Q. You say Guy Salerno came into the restaurant when you were there?—A. Yes; right into the Wallaby.

Q. He asked you to come out and talk?—A. He wanted to have a few words with me and I excused myself.

Q. You were still a member of the union then, were you?—A. I believe I was. [342]

Q. And your made no bones about it, didn't try to hide the fact in any way?—A. No; I didn't go about spreading

it around and neither did I keep it quiet. If someone asked me I would answer them truthfully.

Q. Mrs. Yosper knew you were a member of the union?—A. I think she did.

Q. You were in favor of the union I suppose in your talks with Mrs. Yosper?—A. I wouldn't favor them and I wouldn't disfavor them. I just spoke as I would to any woman, civilly.

Q. But you did state to Mrs. Yosper that you were a member of the union?—A. I never said to anyone.

Q. Mrs. Yosper told you she knew you had been down to the meeting?—A. Yes.

Q. That was at the conversation the day after the meeting; is that right?—A. That is true.

Q. And you didn't deny you had been to the meeting, did you?—A. No; I didn't.

Q. And she knew that a lot of people had been at the
[343] meeting; is that right?—A. That is true.

* * *

[347] Q. Now, getting to that conversation with Mrs. Yosper, Mr. Yosper and Mr. Bagliere, you said that they had been talking. That was the Thursday before the election, the day before the election?—A. That is true.

Q. And you said that Mr. Yosper—what did you say that Mr. Yosper said in regard to the Samson-Crane Company?—A. Well, he said that they were doing business
[348] there under contract, that Franks Brothers was producing and Samson-Crane was distributing the work. He said that if the union got in that the shop would be closed, and I asked him why, and Joe asked him why, and he told us that Mr. Abraham Franks there would take the contract away, thereby there wouldn't be any work and they would close up the shop.

Q. I want you to give me your answer as best you can and as close to your recollection as you can. Did he say that? Or did he say that if the union came in he felt that Samson-Crane—that he himself, Yosper, felt that Samson-Crane would take their work away?—A. No. Frankly, I'll tell you honestly now, that he told me that they would close up the shop, not that he felt.

Q. He didn't say that Mr. Franks said they would close up the shop, did he?—A. He didn't tell me that Franks said anything.

Q. No. He just said that Samson-Crane would take their work away?—A. Yes.

Q. But not that Mr. Franks told him that Samson-Crane would take any work away?—A. He didn't mention Mr. Franks' name except when he said Mr. Franks would take the contract away. He didn't say whether he told him or whether he didn't tell him.

* * *

JOSEPH BAGLIERE, Board witness. [382]

DIRECT EXAMINATION

* * *

Q. While you were employed at Franks Brothers did you join the union?—A. I did. [392]

Q. What union did you join?—A. Amalgamated Clothing Workers.

Q. When did you join the Amalgamated Clothing Workers?—A. I don't remember. I think it was in the end of March or May some time. [393]

Q. 1941?—A. That's right.

Q. Did you sign a card?—A. I did.

Q. Did you attend any meetings of the Amalgamated?—A. I did; once.

Q. Where was the meeting held?—A. At the CIO hall on Common Street, Lawrence.

Q. How long before your termination did you attend that meeting?—A. A couple of days.

Q. Do you recall some election notices being posted in the plant?—A. Yes. There was one. I don't remember what it was, though.

Q. The record shows that the election was scheduled to be conducted on July 25th, 1941. Was it before or after July 25, 1941, that you attended the union meeting?—A. Before.

Q. How long before?—A. A couple of days, I guess.

Q. After attending the union meeting did you go back to work the next day?—A. I did. [394]

Q. Did you have any conversations with either Mr. or Mrs. Yosper with reference to that meeting?—A. I did—Mrs. Yosper.

Q. When?—A. The first thing in the morning before working hours.

Q. What day was that in reference to the meeting?—A. On the day after.

Q. Were other employees present?—A. Yes. I think Antoinette Laudani was present; I am not sure.

Q. Was Mr. Yosper there?—A. No. He hadn't come in yet.

Q. What did Mrs. Yosper say?—A. She asked me if I had gone to the meeting and I told her I did and she asked me why I went. I told her the union could do me some good where she couldn't, and we broke off—it was eight o'clock,—and I went to work.

Q. Did Mrs. Yosper or Mr. Yosper ever say anything to you about the union?—A. Yes; Harry Yosper, both of them as a matter of fact.

Q. When did Harry speak to you about the union?—A. Some time before the election. I remember that, but I don't remember the exact date. Peter Naffah and I were present.

[395] Q. Peter Naffah that testified yesterday?—A. Yes.

Q. Can you tell us whether it was a month before the election?—A. No. It wasn't that long.

Q. Was it a week before the election?—A. Somewhere between a week and a few days. I don't remember exactly just when it was.

Q. Anybody else there besides Mr. Yosper, Peter Naffah, and you?—A. Not that I remember.

Q. What did Mr. Yosper say?—A. We were talking about the union. He was telling us the union was no good and said if the union ever came into the factory that Mr. Franks would close the factory down.

Q. Did you or Peter say anything?—A. I don't remember.

Q. Who gave you your instructions about what work you were to do in the department?—A. Mrs. Yosper gave me most of them.

* * *

[456] REDIRECT EXAMINATION

* * *

Q. When Harry Yosper spoke to you and said something about the shop closing, did he tell you what made him feel that it might close?

Mr. GORDON. I object to that as a leading question. I object to the form of the question.

By Mr. HOBAN:

Q. Did he tell you about how the closing of the shop would come about?

Trial Examiner GUFFY. Overruled. He may answer Yes or No.—A. No.

By Mr. HOBAN:

Q. Did he tell you how the closing of the shop might take place?—A. Well, he said Abe Franks would take his contract away and have the clothes made outside.

Q. Will you tell us whether any other employees were present when that was said?—A. Yes. [457]

Q. Who?—A. Peter Naffah.

* * *

SAM RADIE, Board witness. [479]

DIRECT EXAMINATION

* * *

Q. Were you employed by Franks Brothers Company during July of 1941?—A. Yes, I was.

Q. Were you there at the time that the election notices were posted?—A. Yes. [480]

Q. What department did you work in?—A. Coat department.

Q. Who was your foreman?—A. Jack Freedman.

Q. Did you have any conversations with Mr. Freedman at any time concerning the election which was posted?—A. Well, when we had the notice of the union wanting to come into the shop Mr. Freedman came to me and said that from what he heard he believed that the shop would close if the union got into the factory.

Q. Were any other employees present at this time?—A. No. He was talking to me.

Q. Were there notices up in the plant at the time that he spoke to you?—A. Yes, there were.

* * *

CROSS-EXAMINATION [481]

* * *

Q. Now, this talk that you had with Mr. Freedman, do you recall how it started?—A. There was a few people, or people were talking naturally about this union business and Harry Freedman was going around to different people; then he finally came to me and as I said before he [482] stated that if we people decided to belong to the union, in other words, if the union won the election, the place would be shut down, the work would be made up in another shop.

Q. And he told you he believed that to be the fact?—A. That is what he told me.

Q. Is that correct?—A. That is what he believed, what he told me.

Q. And I suppose there was a lot of talk about the union among the employees in the shop at that time?—A. Yes; there was.

Q. During the course of your work did Mr. Freedman come to you occasionally or regularly at your machine and see how you were doing?—A. Occasionally he did.

Q. And did you ever ask him what he thought about the union?—A. No; I didn't.

Q. After you said what you say he did, did you say anything?—A. No.

* * *

[483] Q. And prior to that time had you ever told anyone about the remarks you say Mr. Freedman made to you?—A. No, I didn't tell anybody, except to the union men.

Q. What union men did you tell it to?—A. Guy Salerno.

Q. And when did you tell it to him?—A. Well, that the shop would be closed you mean?

Q. About the remark you testified to? Did you ever tell him what you say today Mr. Freedman said to you?—A. That the shop would close down; yes.

Q. When did you tell that to Mr. Guy Salerno?—A. I think it was before the election.

Q. Before the election?—A. Yes.

* * *

[618] ROSE PINTO, Board witness.

DIRECT EXAMINATION

* * *

Q. When did you last work at Franks Bros.?—A. September 8, 1941.

Q. How long were you working there prior to September?—A. It was either the last of September or the first

[619] of October, 1941.

Q. What did you do at Franks Bros.?—A. I worked on the buttonhole machine, bar tacking; I sometimes ran the looping machine and tacking on loops and side pockets.

Q. Tell us how you got your job at Franks Bros.?—A. I had heard other people say that there was a clothing factory on Chandler Street, and I had always worked in a clothing factory or dresses, so I went over there one

morning and she asked me what experience I had and I told her.

Q. Who asked you?—A. Mrs. Yosper. And she asked me to come back at one o'clock that day.

Q. Did you?—A. Yes, I did.

Q. And when you got back what happened?—A. Well, she put me on the buttonhole machine and Victoria Rizkallah was teaching me.

Q. Had you met Harry Yosper up to that time?—A. No; I didn't.

* * *

Q. While you were working at Frank Bros. who gave you your instructions with respect to what you should do?—A. Sometimes it was Mrs. Yosper and sometimes it was Mr. Yosper. [620]

Q. During the time you were working there did you join any Union?—A. I signed a membership card.

Q. What Union?—A. The Amalgamated Clothing Workers.

Q. Prior to the time the election was scheduled for, which was July 25, 1941, did you engage in any activity with respect to the Amalgamated other than signing a card?—A. I attended their meetings.

Q. How long before the date of the election was it that you attended the last meeting?—A. I think it was the week of the election.

Q. Where was that meeting held?—A. On Common Street. I think it is CIO Hall.

Q. Did you go to work the next day after attending that meeting?—A. Yes, I did. [621]

Q. Did you have any conversation with either Harry or Minnie Yosper after the meeting?—A. When I went in to work the next morning Mrs. Yosper asked me if I attended the meeting, and I said yes.

Q. What did Mrs. Yosper say?—A. She just said, "How was everything?" and I said, "All right."

Q. Anything else said by either you or Mrs. Yosper—A. No.

Q. Did Harry have anything to say to you about it?—A. It was about the middle of the morning and I was working on my machine and he came over and he says, "Well, I am glad, Mrs. Pinto, we have a Union leader in the shop."

Q. Was there anybody else there besides you and Harry?—A. There was other girls working around me.

Q. Who?—A. There was Victoria Rizkallah was sitting along side of me, and there was girls in back of me.

Q. Who were the girls in back of you?—A. I don't know all their names.

Q. What were the names of some of them, if you remember?—A. There was no one right directly in back of me because Mrs. Yosper used to use one of those machines,

[622] and there was Anna McMillan was the next inside. I don't know who else was there at the time.

Q. Do you remember whether Anna was there or not?—A. Anna McMillan?

Q. Anna McMillan.—A. Yes.

Q. Was there any more to the conversation?—A. I asked him who told him that I was a union leader.

Q. You asked Harry?—A. Yes; and he wouldn't say.

Q. Did he say anything?—A. So I said, "Well, if somebody told you that I was a union leader why don't you ask them all that was said at the meeting?"

Q. What did Harry say to that, anything?—A. He didn't say anything.

Q. Is that all that either Minnie or Harry had to say to you that day with reference to the Union or the meeting?—A. That is all they said that day.

Q. At any other time did they say anything to you concerning the Union or the meeting?—A. I think it was the morning of the election when it was to be held that Harry says that if the Union got in the doors would be closed Friday night.

* * *

[693] Redirect examination by Mr. HOBAN:

Q. Were you at that meeting of July 23d?—A. Yes.

Q. When you arrived was the meeting already going on?—A. No.

Q. What time did it start?—A. I think at five o'clock.

Q. What time did you get through work?—A. We used to get through work at a quarter past four.

Q. Approximately how many employees attended the meeting?—A. Between twenty-five and thirty.

Q. Who spoke at the meeting?—A. Mr. Joseph Salerno and Mr. Jenkins, I think it was.

Q. Which Salerno?—A. Joseph Salerno.

Q. What did Mr. Salerno speak about?—A. He spoke about different factories having a union and how they went along and how the union was good for working people.

* * *

Trial Examiner GUFFEY. No. I think I am satisfied on it. That is, except for the speakers, Joseph Salerno and Mr. Jenkins, I would like to know if there were any persons who sat down in the audience in the two rows of benches other than employees of the respondents. [696]

The WITNESS. No. I don't think there was.

Trial Examiner GUFFEY. Then all these twenty-five or thirty people were employees of Franks Brothers?

The WITNESS. Yes. The ones that weren't employed, they were sitting up in front of us in different spaces.

* * *

REDIRECT EXAMINATION [706]

* * *

Q. Do you remember whether Souren Perperian was at that meeting or not?—A. He was.

Q. Do you remember whether Souren Perperian had anything to say at that meeting?—A. I think he said that he thought that the election should be postponed because quite a few of the workers were scared that they would be fired.

Q. Did he say why they were afraid?—A. No; I don't think so.

* * *

RE-CROSS-EXAMINATION [707]

* * *

Q. Now, at the meeting at which you said Perperian said the election should be postponed?—A. Yes.

Q. As a matter of fact you and Mr. Salerno—wasn't that because Mr. Salerno had said he was disappointed at the number of people who had shown up?—A. Mr. Salerno didn't say anything about being disappointed about the number of people—I don't think he did. I thought he said that it was a pretty good showing.

Q. Did Mr. Jenkins say anything about being disappointed because of the small group that showed up?—A. No. [708]

Q. How did Mr. Perperian happen to get up? Was there anything said before Mr. Perperian said the election should be postponed because quite a few of the workers were afraid?—A. I think they asked the question if they should have the election on Friday or try to postpone it.

Q. Who asked that question?—A. I don't recall who it was but I know that someone——

Q. Someone said, "Should we have the election next Friday or should we try to postpone it?" Is that right?—A. Yes.

Q. And as a matter of fact they said, "What do you think? Can you win it?" or some words to that effect, didn't they?—A. I don't know what words they used.

Q. But it was something to that effect, wasn't it?—A. Someone said we would win out and then someone said that everybody was scared and maybe they wouldn't.

Q. Win it?—A. Win it.

* * *

[710] GUY SALERNO, Board witness.

DIRECT EXAMINATION

Trial Examiner GUFFEY. You are the same Guy Salerno that was sworn and testified previously in this hearing?

The WITNESS. I am.

By Mr. HOBAN:

[711] Q. Were you present at the union meeting on July 23, 1941, that Mrs. Pinto testified about?—A. I was.

Q. Do you remember what Souren Perperian had to say at that meeting?—A. I do.

Q. What did he say?—A. Souren Perperian got up on the floor and he proceeded to debate the issue pro and con alone whether we should postpone the election because of the interference, namely, that the company through its various foremen had told various people that if the union won the election the company would close on a Monday morning following the election. He was debating the point back and forth.

Q. Who was debating the point back and forth?—A. Souren Perperian.

Trial Examiner GUFFEY. He was debating with himself?

The WITNESS. Yes. He was arguing the point back and forth with himself. He said on this side if we have the election postponed the fear that was instilled in the people's minds could be clarified. He said if we had the election he felt that we could have won at the time, but since there was a definite issue of interference there that was explained, if there was interference we would go to the Labor Board and tell them about it and they would in turn issue an order to desist; that issue would be cleared

[712] up for the majority of the people in the plant, and he

just debated the issue back and forth and came to no ultimate conclusion of his own. He wanted to hear what others had to say about it. He just wanted to clarify the situation.

Q. Did any other employees speak?—A. They did.

Q. About the same matter?—A. They did.

Q. Who?—A. Peter Naffah for one.

Q. Is that the same Peter Naffah who testified?—A. It was.

Q. What did Peter say?—A. Peter Naffah said that regardless of the interference he felt—in fact he said he knew that there were enough people who were enthusiastic enough about the union who would vote for it regardless of what the company said; that we would win by a substantial majority, and that we should proceed with the election, and I think—yes, Joe Bagliere it was who felt that because of the interference the election should be postponed because the people were misinformed—they weren't misinformed, they were told by the foreman that the company would close.

Trial Examiner GUFFEY. Who said that?

The WITNESS. Joe Bagliere. [713]

CROSS-EXAMINATION [722]

* * *

Mr. GORDON. I offer in evidence Respondent's Exhibit 8 being a statement dated September 27, 1941, and sworn to by Joseph Bagliere. I offer in evidence Respondent's Exhibit 9, being a statement signed by Rose Yazbek and Joseph Bagliere. And would Mr. Bagliere please leave the room for a few minutes?

(Whereupon Joseph Bagliere leaves the hearing room.)

Mr. GORDON. Purportedly dated July 23d, 1941.

(The witness and Joseph Bagliere return.)

Trial Examiner GUFFEY. They may be admitted as Respondent's Exhibits 8 and 9.

(Whereupon the documents previously marked "Respondent's Exhibits 8 and 9" for identification were received in evidence.)

By Mr. GORDON: [723]

Q. Now, Mr. Salerno, did Mr. Souren Perperian ever make out a statement on the charges of interference that he made at that meeting of July 23d?—A. That question again?

Q. [Read.]—A. I don't think he did.

* * *

[724] Q. But that some other people did?—A. I believe so.

Q. At that meeting of July 23d?—A. I believe so. Let's see now. Sam Radie and I believe it was—this I am not sure of now—Rose Yazbek, possibly, but not absolutely sure. I think we had three at that time.

* * *

[725] Q. But the only statements that the Amalgamated took from those people were prepared and signed at that meeting, weren't they?—A. That is true.

Q. And right in the presence of everybody; isn't that true?—A. That is not true.

Q. Where were they signed?—A. They were signed in an adjoining room, one of the offices.

Q. What is the equipment in that room?—A. A desk, a chair.

Q. Is that all?—A. That is all, a little office.

Q. And that is all you have in there, is a desk and a chair?—A. No. There is more than one chair. There are three chairs. There is a chair behind the desk and two small chairs at each end of the desk.

Q. And what kind of a desk is it?—A. Standard office desk.

Q. What do you mean by standard? What is the equipment of the desk?—A. It has drawers on either side,

[726] it has a chair behind it and drawers on either side—a standard desk. It hasn't a typewriter. Flat top, like this, no typewriter on it.

Q. No typewriter in that room, is there?—A. I don't remember if there is a typewriter in that room or not. They have four typewriters in the office. I don't remember whether there was one in that room or not.

Q. Was the statement taken down in longhand?

Mr. HOBAN. What statement are you talking about?

Mr. GORDON. The statement of Sam Radie.

Mr. HOBAN. Before we have any discussion of the statement of Sam Radie I think we ought to have it.

Mr. GORDON. I am going to ask you for it in a minute.

A. I don't remember whether it was taken in longhand or whether it was typewritten. I don't remember.

Mr. HOBAN. There is the statement of Sam Radie, Mr. Gordon [handing].

Mr. GORDON. Thank you.

By Mr. GORDON:

Q. You say you are not certain how it was taken down; is that correct?—A. That is right.

Mr. GORDON. And the record shows that the statement of Sam Radie's was delivered to me as were the others by Mr. Hoban of the Board from his own files. Now I will offer that statement in evidence as Respondent's Exhibit 10.

Mr. HOBAN. No objection.

Trial Examiner GUFFEY. It may be admitted. [727]

(Whereupon the document above referred to was marked "Respondent's Exhibit No. 10" in evidence.)

By Mr. GORDON:

Q. You say you are not certain whether it was in handwriting or not?—A. I don't remember whether it was in handwritten manner or typewritten and then signed. I don't exactly recall that now.

Q. Were these statements signed before the meeting?—A. No. They were signed after the meeting. The meeting was called for two purposes.

Q. You have answered the question. What were the two purposes?—A. Two principal purposes?

Q. Yes.—A. To discuss the situation of interference with the employees and general conditions in the clothing industry.

Q. Was there talk at the meeting about whether you could win the election, the Amalgamated could win the election?—A. Yes; there was some talk there I think.

Q. And was there a vote taken as to whether they should have the election?—A. I think there was.

Q. You don't have any active recollection about that, do you?

Mr. HOBAN. Let him finish his answer, Mr. Gordon. [728]

A. The majority of the people there felt that because of the interference that it would be advisable to postpone the election.

* * *

SAMUEL FRANKS, Board witness. [763]

DIRECT EXAMINATION [783]

* * *

Q. Do you remember giving any instructions to any your foremen at Franks Brothers——A. As I before——

Trial Examiner GUFFEY. Wait until he finishes his question.

Mr. GORDON. Read the question thus far.

(Question read.)

By Mr. HOBAN:

Q. That they should see to it that employees punched in before they began working?—A. As I said before the matters of the shop is all—all the shop matters my son takes care of it.

Q. How much pay does your son get from Franks Brothers?—A. He don't get any pay.

Q. You have an agreement with Samson-Crane, don't you—Franks Brothers?—A. What kind of an agreement?

Q. Don't you have an agreement that you shall make their goods by contract?—A. We don't make their goods
[784] by contract. We make them together.

* * *

[793] Re-cross-examination by Mr. GORDON:

Q. Mr. Franks, who is it that has full charge of the factory help, the shop?—A. Abe.

Q. Abe Franks. And have you had anything to do with any of the letters to or back from the Labor Board during this particular case?—A. Not at all.

Q. You had nothing to do with it at all?—A. No, sir.

Q. Who takes care of that?—A. Abe takes care of it.

Mr. GORDON. That is all.

Redirect examination by Mr. HOBAN:

Q. Abe Franks is in charge of the whole factory?—A. He what?

Q. You say Mr. Abe Franks takes charge of the whole factory?—A. Yes.

Q. Who are the foremen directly under Abe Franks in the factory?—A. All the foremen there.

* * *

[875] ABRAHAM ALFRED FRANKS, Respondent's witness.

[880] DIRECT EXAMINATION

* * *

Q. At any rate, at the conference at the Bradford Hotel, did you refuse to enter into any agreement with him?—
[881] A. I refused to enter into any agreement, but told him I

would discuss it again with my father and if there was any change in the situation I would get in touch with him.

* * *

By Mr. GORDON: [885]

Q. Now I show you paper marked Respondent's Exhibit 14 for identification and ask you whether you can identify that, being copy of a letter dated July 31, 1941, and an enclosure?—A. Yes.

Mr. HOBAN. I am going to object to it on the ground it is immaterial. [886]

Trial Examiner GUFFEY. Objection overruled.

By Mr. GORDON:

Q. Will you identify that, please?—A. That is copy of letter which I received sometime after the 31st of July—I think a day or two later.

Q. Now did the company agree to post the notice which is attached to that exhibit?—A. The company didn't agree to it.

Q. And what objection did the company have to the posting of the notice?—A. The company had no objection except to the third paragraph of this notice.

Q. And that is the paragraph that reads what?—A. "The company hereby advises its employees there will be no shut-down of the plant because of employees selecting a union."

* * *

By Mr. GORDON: [887]

Q. And what was your objection to that?—A. Well, I didn't think that this sentence told the whole story. If there should be a shut-down of the plant for any reason whatsoever after the employees selected the union, it would indicate to the people or our employees that that might have been the reason. We could say, for example, that it was due to the failure to obtain materials or other things, and we felt that we should have the right to enlarge upon that particular aspect.

* * *

By Mr. GORDON: [891]

Q. I show you copy of a letter and an enclosure marked Respondent's Exhibit 17 for identification, dated August 19, 1941. Can you identify this?—A. Yes, I can identify it. It is a copy of a letter which I received from you with the enclosure.

Q. Now I call your attention on the enclosure, the notice, to the paragraph in parenthesis starting "However" and ending "plant."—A. Yes.

Q. Now will you state whether or not you had advised me you wanted that portion in the notice?—A. I did so advise you.

Q. And you so advised me after receiving earlier notice, is that correct?—A. Another notice; a different notice.

• • •

[892] By Mr. GORDON:

Q. Now do you know Mr. William Gordon of the Labor Board?—A. I do.

Q. Subsequent to the notice which is Respondent's Exhibit 17, did you have a conference with Mr. William Gordon?

• • •

[893] By Mr. GORDON:

Q. Now at that conference was this notice which is attached to Exhibit 17 discussed?—A. Yes; it was discussed.

Q. Do you recall whether you made any point of the portion of the paragraph in parentheses starting with "However"?

Mr. HOBAN. Let us have the conversation.

By Mr. GORDON:

Q. Tell us what the conversation was.—A. Well, we had a discussion. I think it started about 4:30 in the afternoon and lasted until about 5 o'clock and we had quite a long discussion about the notice. I suggested to Mr. Gordon our reasons for wanting the inclusion.

Trial Examiner GUFFEY. That is Mr. William Gordon?

The WITNESS. Yes, stating to Mr. William Gordon our reasons for wanting the inclusion of the sentence in parentheses in the notice and he——

Mr. HOBAN. Let us have the conversation, please.

Mr. GORDON. He started to state "and he stated"——

The WITNESS. I gave Mr. William Gordon our reasons for wanting the inclusion of the sentence that is in

[894] parentheses and he stated that the Board wanted to have the notice only in the form in which it was submitted in and no other. He stated that he didn't want any mention made of the—he wouldn't allow any elaboration on the notice and any description as to why the plant was closed,

if it were closed, and we couldn't arrive at any agreement and Mr. William Gordon left at about five o'clock.

* * *

CROSS-EXAMINATION [908]

* * *

Q. What is your busy season?—A. Well, I don't know. The busy season is that we work 52 weeks in a year and always work to capacity. My busy season is all the year around. Franks Brothers' busy season is 52 weeks in the year. We manufacture clothing all the time. We never had any slack season or lay-offs during the last five or six [909] years.

Q. Business has been pretty good the last five or six years?.

Mr. GORDON. I object.

By Mr. HOBAN:

Q. You worked to full capacity during 1941?—A. Yes.

Q. The whole year long?—A. Yes, sir.

* * *

Q. Showing you a paper attached to Respondent's [915] Exhibit 14, I think you stated on your direct examination, one of those paragraphs was objectionable to you. Is that correct?—A. That is right.

Q. Which paragraph was that?—A. No. 3.

Q. That is the one which states that the company hereby advises its employees that there will be no shut-down [916] of the plant because of employees selecting a union? What was your objection to that?—A. Because I didn't think it tells the whole truth.

Q. Is there anything in it that is not true?—A. I think it is a half truth.

Q. What would the whole truth be?—A. If I were wording it, I would like to see something like appears in this one: "However, if the union wins"——

Q. You mean Respondent's Exhibit 17?—A. Yes, "However, if the union wins their election and makes excessive demands on the company, the company may cease operations and close the plant."

Q. Does not Respondent's Exhibit 17 with the parenthesis in there express the truth?—A. That is right, this sentence beginning with "However."

Q. That is the truth?—A. Yes; that is right.

Q. And that was the truth at that time?—A. That is right. That is substantially the truth or "any other reasons which are beyond our control."

Q. Isn't it true that the company might also close for reasons which were beyond its control?—A. That is right.

Q. Now at that particular time you were in full oper-
[917] ation, weren't you?—A. That is right.

Q. And the controlling individuals of the Samson-Crane Company, you knew there were no immediate prospects that Franks Brothers would close down?—A. I wouldn't say that. I won't say at any time there are no immediate prospects of closing down.

Q. There was nothing unusual about that in respect to July, 1941, was there?

Mr. GORDON. I object to it as being too indefinite.

By Mr. HOBAN:

Q. In July, 1941, were there any reasons why you thought the plant might close down which were not connected with the union?—A. Materials began to be a little difficult to get at that time and became more and more so. Linings were more and more difficult to get, but I wouldn't say outside of that there was any prospects of it.

Q. What you had in mind when you objected to Respondent's Exhibit 14 was the fact that if the union requested large wage increases, you might have to close your plant?—A. Yes, if they made excessive demands on the company which we couldn't afford to pay, we probably would have to close the plant, and there might have been other reasons.

Q. Mr. Lerman at his conference with you at the Bradford Hotel or at the Labor Board Conference on July 3rd,
[918] did not discuss what the demands of the union would be, did he?—A. No, he didn't say anything about demands. He said it wouldn't cost us any more to operate.

Q. Exactly the opposite to what you feared?—A. I don't know as we feared it. Fear is rather a strong word.

Q. Did you expect the union would make excessive demands?—A. I didn't know. I couldn't foretell what they would expect if they want an election.

Q. Have you any reason to think they would make excessive demands?—A. No.

Q. As a matter of fact, you wanted that phrase in there, didn't you, so that employees would realize if they voted for the union Samson-Crane Company would withdraw

its contract from Franks Brothers and Franks Brothers would have to close?—A. No.

Q. Isn't that why you wanted it in there?—A. No.

Q. When you objected to the notice attached to Respondent's Exhibit 14, you had no intention of closing down, had you?—A. Intention?

Q. Yes.—A. No, sir. [919]

* * *

HARRY YOSPER, Respondent's witness. [943]

* * *

DIRECT EXAMINATION [946]

* * *

Q. Now Victoria Riskella testified in this hearing that on the day before an election was to be held, that day being July 24, 1941, you said to Rose Pinto she was a union leader. Did you say that to Rose Pinto?—A. No, not directly to Rose Pinto.

Q. Will you tell us the circumstances and what was said?—A. It was after the meeting them had. I didn't know they were going to have a meeting that night. In the morning they came in and started talking about it.

Q. Who did?—A. Rose Yazbeg and Victoria and Rose Pinto and Anna McMillan, they were standing there talking about what happened at the union. Then just as a crack I said, "I didn't know we had union leaders here," and I went away and I didn't say direct to her. I said it just as I would say anything else,—just a crack. [947]

Q. You made the crack to the group of them?—A. Yes; I did.

Q. Now do you know Peter Naffah?—A. Yes.

Q. Now Peter Naffah and Joseph Bagliere testified that on some day, July 24th, you talked with them about the union. Did you?—A. Not about the union. The only thing I said was, I am a working man the same as the rest of them. I am no manufacturer. It is my job as well as the rest of them. The only thing I said was if the union comes in here they might close up the shop—meaning myself. I would be out of a job, too.

* * *

Mr. HOBAN. Mr. Examiner, there has been furnished to me by counsel for the respondent, a list of the names of persons who received pay during certain week endings for 1941. This exhibit I shall describe as to what it contains in order to save the work of having Miss Kiesling [1083]

come in and identify the different items. On the left-hand side of each of the sheets comprising Board's Exhibit 22, which is this list, are the names of the employees. The second column entitled "Work" consists of certain classifications which it is my understanding do not appear on the payroll but were made up in the fashion described by Miss Kiesling yesterday. The columns which have dates and under which appear asterisks indicate the pay-
[1084] roll week endings. That is what the figure at the top of the column represents and the asterisks beside the name of the particular employee means that employee worked during the pay-roll week ending on the day indicated at the top of the column. The dates run from June 5th to July 31st, inclusive. I offer in evidence Board's Exhibit 22. I will state that this data which appears on Board's Exhibit 22 has been checked by the Board for accuracy against the original records.

Trial Examiner GUFFEY. By whom was it prepared?

Mr. HOBAN. It was prepared by Miss Kiesling, the witness who testified yesterday, from the payroll records of the company and was checked by a Board's field examiner against those records.

Trial Examiner GUFFEY. Miss Kiesling is known as Mrs. Lanouette?

Mr. HOBAN. Yes.

Trial Examiner GUFFEY. Is there any objection to the offer?

Mr. GORDON. No.

Trial Examiner GUFFEY. It may be admitted as Board's Exhibit 22.

(Whereupon the document above referred to was marked "Board's Exhibit 22" in evidence.)

* * *

[1090] JACOB FRIEDMAN, Respondent's witness.

[1091] DIRECT EXAMINATION

* * *

Q. Did you receive any instructions in regard to what your attitude should be in respect to union activities?—A. I received instructions from the firm that I shall not discuss anything regarding unions at all with the help. It had nothing to do with me at all.

Q. Do you know when you received those instructions, approximately, in relation to the date the election was

supposed to take place?—A. A week or a week and a half before.

Mr. GORDON. That is all.

Cross-examination by Mr. HOBAN:

Q. After that date on which you received the instructions from Mr. Franks, did you speak to any of the employees about the union?—A. I did not, sir.

* * *

Q. Did any of the employees ask you any questions about the union?—A. Yes, they did. The only questions a few asked me—they said they heard certain rumors, certain people saying that in case it was a union shop the factory would be closed, but I never heard that direct from the firm or from anyone who is associated with the firm, from any of the foremen, or anything like that. [1093] [1094]

Q. Who are some of the employees who told you about that rumor?—A. Several of them that worked there quite some time.

Q. Do you remember any of their names?—A. Yes, I do.

Q. Who are they?—A. Why, in our pressing department they even spoke to me about some previous time—this was a rumor they heard—not that they said they knew about it—just an occasional talk.

Q. When the employees told you that, did they ask you any question about what your opinion was?—A. They did ask me "What do you think?" and I said, "I don't know anything about it. I don't know anything more about it than the wall over there. I don't know."

* * *

PETER NAFFAH, a witness called in rebuttal by the National Labor Relations Board, having been previously sworn, was examined and testified as follows. [1108]

DIRECT EXAMINATION [1112]

* * *

Q. During 1941, did you receive any wage increases?—A. Yes; I received one wage increase.

Q. Who notified you of your wage increase?—A. Mrs. Yosper.

Q. What was your conversation with Mrs. Yosper concerning the wage increase?

Mr. GORDON. Now I object to this as not being rebuttal evidence at all.

Mr. HOBAN. This is on the credibility of Mrs. Yosper.

Trial Examiner GUFFEY. Overruled.

A. I come in this day when I was called over to the place where they check off work and she told me I had re-

[1113] ceived a wage increase in one of my jobs. You know, because she liked me. I had asked for a wage increase, asked Mr. Yosper for it, and he didn't tell me whether I was going to get it or not, and evidently he must have told her about it, because she spoke to me and said she was the person to see for the wage increase, because she controlled the money.

* * *

[1129] SOUREN PERPERIAN, Board witness.

[1130] DIRECT EXAMINATION

* * *

Q. While you were employed at Franks Brothers, did you join the union?—A. Yes.

Q. What union did you join?—A. The Amalgamated Clothing Workers.

Q. I show you Board's Exhibit 12–32 and ask you whether you put that name on the card?—A. Yes; that is my writing.

Q. I show you Respondent's Exhibit 11 and ask you whether that is your signature that appears there?—A. Yes; it is.

Q. And did you sign that paper?—A. Yes.

Q. Now I show you another sheet which is marked "Board's Exhibit 16, rejected," and ask you whether you recognize that?—A. Yes; I do.

* * *

[1132] Trial Examiner GUFFEY. I notice there is a name on here that is crossed out and yet it can be read. I wonder if that name should be crossed out?

Mr. GORDON. I don't think it should.

By Mr. HOBAN:

Q. Mr. Perperian, showing you Board's Exhibit 16, I ask you whether you know the circumstances under which the words "Harry Yosper" were crossed out?—A. Why the name was crossed out at that time?

Q. Yes.—A. Well, I was asked if anything was said in the shop about Franks Brothers closing the plant if the union came in and the name was put down as Harry Yosper. Harry Yosper and I never talked about it. The

man I talked to was Mr. Friedman. I couldn't very well say Mr. Yosper told me Franks Brothers would close up. So that is why I had that name crossed off, because I couldn't say Mr. Yosper said it.

Trial Examiner GUFFEY. Who erased that?

The WITNESS. I think one of the men did at that time.

Trial Examiner GUFFEY. Did you see it done?

The WITNESS. Yes; I objected to that name.

Trial Examiner GUFFEY. Where was it done?

The WITNESS. In the meeting.

Trial Examiner GUFFEY. Was it done before or after you signed the statement? [1133]

The WITNESS. That was done before because I wouldn't sign it until that name was crossed off.

Trial Examiner GUFFEY. I will reverse my previous ruling on the previous offer of Board's Exhibit 16 and it may be admitted.

(Whereupon the document above referred to was marked "Board's Exhibit 16" in evidence.)

* * *

BOARD EXHIBIT No. 4

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIRST REGION

Case No. I–C–1797

In the Matter of FRANKS BROS. COMPANY *and* AMALGAMATED CLOTHING WORKERS OF AMERICA (C. I. O.)

STIPULATION

It is hereby stipulated and agreed by and between FRANKS BROS. COMPANY, hereinafter called the Company, by its Attorney, Benjamin E. Gordon, and Albert J. Hoban, Attorney, National Labor Relations Board, First Region, as follows:

1. The Company is, and has been since 1924, a Massachusetts corporation with its principal office and place of business at 46 Chandler Street, Lawrence, Massachusetts.

2. The Company is engaged in the manufacture, sale, and distribution of men's suits, overcoats, and topcoats at its plant located at 46 Chandler Street, Lawrence, Massachusetts, hereinafter called the Lawrence Plant.

3. The principal raw materials used by the Company in the manufacture of its finished products at the Lawrence Plant consist of woolens and worsteds, rayons, and miscellaneous findings. During the period from January 1, 1941, to December 31, 1941, the Company used $125,000 worth of woolens and worsteds, $18,000 worth of rayon and $7,000 worth of miscellaneous findings at its Lawrence Plant. Approximately 22 percent of the woolens and worsteds, 50 percent of the rayon, and 45 percent of the miscellaneous findings were shipped to the Lawrence Plant from points outside the Commonwealth of Massachusetts.

4. During the period from January 1, 1941, to December 31, 1941, the Company manufactured approximately $200,000 worth of men's suits, overcoats, and topcoats.

5. Nothing in this stipulation shall preclude the Company or the Board, or any other party to this proceeding, from introducing further evidence with respect to the operations of the Company.

Signed this day of March 1942 at Massachusetts.

FRANKS BROS. COMPANY,
By BENJAMIN E. GORDON,
Its Attorney.

ALBERT J. HOBAN,
Attorney, National Labor Relations Board, First Region.

BOARD EXHIBIT 12-14

APPLICATION FOR MEMBERSHIP

I hereby authorize the officers of the Boston Joint Board of the Amalgamated Clothing Workers of America to be my representatives in collective bargaining relations, as provided for in the National Labor Relations Board, with the firm which I am now employed.

Name: Grace Di Primo. Date: 3/4/41.
Address: 130½ Common St.
Kind of work:
Shop: Franks. Male Female √

BOARD EXHIBIT No. 12-2

APPLICATION FOR MEMBERSHIP

I, the undersigned, hereby apply for membership with the Amalgamated Clothing Workers of America and designate them as my sole bargaining agent for the purpose of collective bargaining.

Date: March 17, 1941.

Name: Katie Asudvorian.
Address: 127 Exchange. City:
Name of concern: Franks Bros.
Kind of work: Beater. Sex: F.

BOARD EXHIBIT No. 16

AMALGAMATED CLOTHING WORKERS UNION

NEW ENGLAND REGIONAL OFFICE

73 Tremont Street, Room 517

Boston, Massachusetts

LAWRENCE, MASS., *July 23, 1941.*

This is to certify that Mr. Jacob Freedman, foreman of the coat shop and ——— ———, foreman of the pants shop of Frank Brothers, told us that if the Union wins the election next Friday, the shop will shut down, and that the people will be out of work.

SOUREN PERPERIAN.

BOARD EXHIBIT NO. 22

Name	Work	6/5	6/12	6/19	6/26	7/3	7/10	7/17	7/24	7/31
K. Asadoorian	machine	•	•	•	•	•	•	•	•	•
Simone Binette	do	•	•	•	•	•			•	•
Lucy Malandrino	do	•	•						•	•
Rose Blake	do	•	•	•	•	•	•	•	•	•
Rose LaFleur	do	•	•	•	•	•	•	•	•	•
Louise Lantagne	do	•	•	•	•	•	•		•	•
Lauretta Caruba	do	•	•	•	•	•	•	•	•	•
Leo Gilman	presser	•	•	•	•	•	•	•	•	•
Anna Darwesh	floor girl	•	•	•	•	•	•	•	•	•
Eva April	basting puller	•	•	•	•	•	•	•	•	•
Nancy Gisaro	finisher	•	•	•	•	•	•	•	•	•
Pauline Ricci	machine	•	•	•	•	•	•	•	•	•
Anna Malandrino	do	•	•	•	•	•	•	•		
Salvatrice Armano	finisher	•	•	•	•	•		•	•	•
Angelina Malandrino	machine	•	•	•	•	•	•	•	•	•
Vahey Boyajian	presser	•	•	•	•	•	•	•	•	•
Carmela Messina	machine	•	•							
Rita Haddad	do	•	•	•	•	•	•	•	•	•
Ernesta Mini	do	•	•	•	•	•	•	•	•	•
Araxe Hagopian	finisher	•	•	•	•	•	•	•	•	•
Julius Kondrat	presser	•	•	•	•	•	•	•	•	•
Jane Derbogosian	finisher	•	•	•	•	•	•	•	•	•
Vosgi Meranian	do	•	•	•	•	•	•	•	•	•
Leonie Grenier	machine	•	•	•	•	•	•	•	•	•
Mary Cappello	do	•	•	•	•	•	•	•	•	•
Elvira Ricci	do	•	•	•	•	•	•	•	•	•
Elio Melucci	shaper	•	•							
Angelina Randone	machine	•	•	•	•	•	•	•	•	•
Michael Weshonko	presser	•	•	•	•	•	•	•	•	•
Azard Shahtanian	hand presser	•	•	•	•	•	•	•	•	•
Rose Essolan	machine	•	•	•	•	•	•	•	•	•
Josephine Caruba	do	•	•	•	•	•	•	•	•	•
Josephine Midolo	do	•	•	•	•	•	•	•	•	•
Raymond Marcoux	presser	•	•	•	•	•	•	•	•	•
Mary Haddad	machine	•	•	•	•	•	•	•	•	•
Lucy Nocera	do	•	•	•	•	•	•	•	•	•
Sarah Lomaso	do	•	•	•	•	•	•	•	•	•
Ida Vains	do	•	•	•	•	•	•	•	•	•
Grace Zappala	do	•	•	•	•	•	•	•	•	•
Janet Ferris	do	•	•	•	•	•	•	•	•	•
Sam Radie	presser	•	•	•	•	•	•	•	•	•
Ida Gallo	cleaner	•	•	•	•	•	•	•	•	•
Grace DiPrima	machine	•	•	•	•	•	•	•	•	•
Charles Teis	shaper	•	•	•	•	•	•	•	•	•
Redman Ellsey	presser	•	•	•	•	•	•	•	•	•
Eva Noel	machine	•	•	•	•	•	•	•	•	•
Joseph Calarese	presser	•	•	•	•	•	•	•	•	•
Frances Renkowski	machine	•	•	•	•	•	•	•	•	•
Sybil Shahtanian	do	•	•	•	•	•	•	•	•	•
Siranoush Krikorian	button sewer	•	•	•	•	•	•	•	•	•
Mary Zazzo	machine									
Wave Cram	cleaner									
Olive Clark	machine									
Olive Saliba (Naffah)	sorter-tickets	•	•	•	•	•	•	•	•	•
Armand Gilman	cutter	•	•	•	•	•	•	•	•	•
Sarah Reina	sorter-tickets	•	•	•	•	•	•	•	•	•
Harty Garabedian	cutter	•	•	•	•	•	•	•	•	•
George Sarkis	do	•	•	•	•	•	•	•	•	•
Shemovan Perperian	do	•	•	•	•	•	•	•	•	•
Souren Perperian	do	•	•	•	•	•	•	•	•	•
Sylvia Chagnon	machine	•	•	•	•	•	•	•	•	•
Sonia Bedrosian	do	•	•	•	•	•	•	•	•	•
Elizabeth Mooshian	do	•	•	•	•	•	•	•	•	•
Eugenia Ciofolo	do	•	•	•	•	•	•	•	•	•
Nivart Moasesian	do	•	•	•	•	•	•	•	•	•
Antonina Bagliere	do	•	•	•	•	•	•	•	•	•
Luke Krikorian	machine-presser	•	•	•	•	•	•	•	•	•
Margaret Grasso	machine	•	•	•	•	•	•	•	•	•
Rose Pionowska	do	•	•	•	•	•	•	•	•	•

BOARD EXHIBIT NO. 22—Continued

Name	Work	6/5	6/12	6/19	6/26	7/3	7/10	7/17	7/24	7/31
Ruth Kiesling (Lanouette).	office	•	•	•	•	•	•	•	•	•
John Boehm	shipper	•	•	•	•	•	•	•	•	•
Wojciech Bialek	janitor	•	•	•	•	•	•	•	•	•
Jacob Friedman	foreman (coat)	•	•	•	•	•	•	•	•	•
Harry Yosper	foreman (pant)	•	•	•	•	•	•	•	•	•
Minnie Yosper	floor girl	•	•	•	•	•	•	•	•	•
Peter Naffah	presser		•	•	•	•	•	•	•	•
Rose Pinto	machine	•	•	•	•	•	•	•	•	•
Rose Yazbek	do	•	•	•	•	•	•	•	•	•
Martha Sachuk	do	•	•	•	•	•	•	•	•	•
Anna Fichera	do	•	•	•	•	•	•	•	•	•
Rose Sarao	do	•	•	•	•	•	•	•	•	•
Antonetta Laudani	button sewer	•	•	•	•	•	•	•	•	•
Anna McMillan	machine	•	•	•	•	•	•	•	•	•
Armenag Ohanian	presser	•	•	•	•	•	•	•	•	•
Joseph Bagliere	do	•	•	•	•	•	•	•	•	•
Alfreda Bruno	machine	•	•	•	•	•	•	•	•	•
Christina Pisano	do	•	•	•	•	•				
Anna Hatem	do	•	•	•	•	•	•	•	•	•
Mary Caraccio	do	•	•	•	•	•	•	•	•	•
Victoria Rizkallah	do	•	•	•	•	•	•	•	•	•
Rose Hatem	do					•	•			
Theo Proulx	do						•	•		
Andrew Fichera	presser	•	•							
Joseph Tarallo	do	•								

RESPONDENT'S EXHIBIT NO. 9

AMALGAMATED CLOTHING WORKERS UNION

NEW ENGLAND REGIONAL OFFICE

73 Tremont Street, Room 517

Boston, Massachusetts

LAWRENCE, MASS., *July 23, 1941.*

This is to certify that ——— ———, foreman of the coat shop, and Harry Yasper, foreman of the pants shop of Frank Brothers, told us that if the Union wins the election next Friday, the shop will shut down, and that the people will be out of work.

ROSE F. YAZBEK.
JOSEPH BAGLIERE.

RESPONDENT'S EXHIBIT NO. 10

AMALGAMATED CLOTHING WORKERS UNION

NEW ENGLAND REGIONAL OFFICE

73 Tremont Street, Room 517

Boston, Massachusetts

LAWRENCE, MASS., *July 23, 1941.*

This is to certify that Mr. Jacob Freedman, foreman of the coat shop, and ——— ———, foreman of the pants shop of Frank Brothers, told us that if the Union wins the election next Friday, the shop will shut down, and that the people will be out of work.

SAM A. RADIE.

U. S. GOVERNMENT PRINTING OFFICE: 1943

[fols.1-179-181] BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIRST REGION

Case No. I-C-1797

In the Matter of

FRANKS BROS. CO.

and

AMALGAMATED CLOTHING WORKERS OF AMERICA (C.I.O.)

Appearances: Albert J. Hoban, appearing for the National Labor Relations Board.

Benjamin E. Gordon and Harry Gordon, 18 Tremont Street, Boston, Mass., appearing for the Respondent, Franks Brothers Co.

[fols. 182-244] COLLOQUY

Mr. Hoban: I also contend that John Arzoomanian, who was drafted into the military service, should be within the appropriate unit.

Mr. Gordon: We contend that he should be excluded from the unit.

Mr. Hoban: I believe that Mr. Franks testified yesterday that he was drafted some time prior to June 12th. Do you happen to have the date on that?

Mr. Gordon: Yes. It was in March, 1941, March 13, 1941, that he was drafted, and his employment was severed as of that time. Now, there is another employee on that list, if you will take this stipulation, Mr. Hoban. Leo Gilman was on the list of June 5, whose employment has been severed as of February 5 when he was drafted.

Mr. Hoban: February 5, 1942?

Mr. Gordon: 1942.

Mr. Hoban: All right.

Mr. Gordon: And it is our contention that he therefore is out of the appropriate unit.

Mr. Hoban: I will agree that he ceased work because he was drafted. Of course I will not stipulate that either of those individuals were terminated because I don't think as a matter of law they can be.

[fol. 245] LOUIS HASCALL, Board witness.

Cross-examination.

* * * * * * *

Q. By the way, did you testify that you told Mr. Lerman before you went down to Franks Brothers that you had gone as far as possible with the employees of the company?

A. As far as possible?

Q. Yes. Did you testify that?

[fol. 246-287] A. Yes. I said we went as far as possible but we were still continuing to see if we could do better, if there was anything we could do.

Q. What did you mean when you said you went as far as possible?

A. A lot of times we finish a drive and we think that is as far as we can go, and after the talk keeps going around we can go back a week later and still convince more people that wasn't convinced before.

* * * * * * *

[fol. 288] GUY G. SALERNO, Board witness.

Direct examination.

Q. Now I direct your attention to Board's Exhibit 8. On Board's Exhibit 8 appears the name of Anna Melandrino. Do you know Miss Melandrino?

A. I certainly do,—450 Andover Street.

Q. I show you Board's Exhibit 12-25 and ask you whether the signature which appears on there is the signature of the Anna Melandrino on the company's payroll which is Board's Exhibit 8?

A. It is. Some of this card was filled in by me.

Q. Board's Exhibit 12-26, so that the record will be clear, will you tell us what that signature is on there?

A. That is Angelina Melandrino. This is filled out complete by herself.

Q. Is Angelina Melandrino related to the other?

A. Mother and daughter. She is lame, the daughter is lame.

Q. I notice that some of the cards are undated in Board's Exhibit 12.

A. When I started the organizational drive in Franks Brothers, not ever having been through a formal board hearing I didn't realize that the date would be of vital im-
[fol. 289] portance, so long as I had the name and address signed in their own handwriting that was all I needed, and sometimes they just put their name and address on it and that was all there was to it. You couldn't tell whether they were male or female sometimes.

Q. I show you Board's Exhibit 12-20 and ask you to read that name which appears on there as a formal signature.

A. Leona Grenier, 292 Lowell Street. I believe this is a girl, she was French,—277, I think that is her boarding house,—and this girl doesn't' speak English very well; in fact I had to talk to her in French.

Q. Do you speak French?

A. I speak French. I can make myself understood anyway.

Q. Did Leona Grenier sign the card in your presence?

A. She did.

Q. I show you Board's Exhibit 12-44 which bears the signature of Skippy Shahtanian.

A. She has a sister. They are both members of the union. "Skippy" isn't her name.

Q. On the company's payroll appears Azard Shahtanian, hand presser. Is that the same person as Skippy?

A. Yes, that is the same person.

Trial Examiner Guffey: Are you going through these cards merely for the purpose of clarifying signatures that are not clear?

[fol. 290] Mr. Hoban: And one or two other purposes. No: simply to clarify the cards.

Trial Examiner Guffey: The reason I ask, on almost every card we have been getting voluntary comments by the witness about where they live or how many brothers or sisters they have, and so forth. I would like to keep that out of the record. Just answer the question.

By Mr. Hoban:

Q. Just answer the questions as they are put to you. On Board's Exihibit 12-39, which is the signature of Sarah Reina, is that the same Sarah Reina whose name appears on the company's payroll?

Trial Examiner Guffey: When you say "payroll" I take it you mean Board's Exhibit 8?

Mr. Hoban: Board's Exhibit 8.

A. Yes, that is the one.

Q. I show you a card, Board's Exhibit 12-12. What is this signature, Genie Ciofolo. Do you know whether that is the same person as Eugenia Ciofolo on Board's Exhibit 8?

A. It is the same.

Q. I show you a card which bears the signature of Ann Bagliere, which is Board's Exhibit 12-3, and ask you whether that is the same person as appears on Board's Exhibit 8 as Antonina Bagliere?

A. Yes, it is.

[fols. 291-424] Q. Is she related to Mr. Joseph Bagliere?

A. His sister.

Q. I show you a card, Board's Exhibit 12-5, and ask you whether that card was signed by George Bialek?

A. George Bialek can't write. Someone,—his daughter, I believe,—someone in his family signed it for him.

Q. Who put the "X" before the George Bialek?

A. He did. George Bialek put his "X" before it.

Q. Was this whole proceeding done in your presence?

A. It was.

Q. Was any explanation made to Mr. Bialek as to what the card was?

A. He knew what it was because Jenkins was there, and Jenkins can speak to him in his native tongue. He understands English too.

Q. His native tongue is what?

A. Either a Lett or Pole, or one of those.

Q. Where is Mr. Jenkins now?

A. In Canada.

Q. Were all those cards which appear in Board's Exhibit 12 signed prior to June 9, 1941?

A. They were.

* * * * * * *

[fol. 425] Joseph Bagliere, Board witness.

Cross-examination:

* * * * * * *

Q: And Harry Yosper never told you that he would discipline you for talking about the union, did he?

A. No. He only told me they would close up the shop [fols. 426-427] if the union got in.

Q. He told you he felt the job would close down if the union came in, is that right?

A. That is right.

. . . . . .

[fols. 428-891] Q. When did Harry Yosper talk to you about the union?

A. Before the meeting.

. . . . . .

[fols. 892-1086] ABRAHAM ALFRED FRANKS, Respondent's witness.

Direct examination:

. . . . . .

Q. Subsequent to the notice which is Respondent's Exhibit 17, did you have a conference with Mr. William Gordon?

A. I did.

. . . . . .

[fol. 1087] COLLOQUY

Mr. Gordan:

. . . . . .

Now I should like to introduce at this time as Respondent's Exhibit 22,—I offer in evidence, an exhibit which contains the names and classifications of employees of the payroll of the company. That is, employees who worked during the work week of March 5th, 1942, these employees being paid on March 13, 1942, and state that this exhibit was prepared in exactly the same manner as Board's Exhibit 22 and that it has also been checked in the same manner by a field examiner of the Board, from a comparison of the original records.

Mr. Hoban: That is correct, Mr. Examiner.

Trial Examiner Guffey: State the purpose of the offer.

Mr. Gordon: The purpose of the offer is to show the employees of the company on the payroll date since the issuance of the complaint in this case.

Trial Examiner Guffey: Any objection?

Mr. Hoban: I will state while I know the exhibit to be an accurate statement of the names of the employees as stated by Mr. Gordon, nevertheless I object to the intro- [fol. 1088] duction of the exhibit on the ground it is immaterial.

Trial Examiner Guffey: Overruled, and it may be admitted as Respondent's Exhibit 22.

(Whereupon the document above referred to was marked Respondent's Exhibit 22 in evidence.)

Mr. Gordon: I want to explain a few changes. In addition to what is typewritten on this sheet by agreement of the parties, the name Rose Blake was written in in longhand as an employee who received pay for work during the week of March 5th and then her occupation has also been written in as "Machine;" that the typewritten portion of this exhibit gives the name Rose Mistrella and it is agreed that that should be Rose Mistretta and that change has been made on the exhibit in pencil. In addition, the name Mary Cunba should read Cunha and that change has been made on the exhibit.

On the top of the second sheet of this exhibit,—Respondent's Exhibit 22, has been inserted the name in pencil Joseph Hebert as janitor's assistant and Frank Hekiam, cutter, for the reasons that said persons were all working during the work week of March 5th and were employees as of said date. The name Andrew Fichera, presser, that a line has been drawn through it and the facts are he [fols. 1089-1095] started employment on March 12th, 1942; and that the name "Armenag Ohanian," presser, has also had a line drawn through it and it is submitted he was out that week sick as shown on the exhibit. The name Sally Kahwajy, machine, has also had a line drawn through it and the facts are she started employment on March 12th, 1942. The name Rose Yazbek, machine and Olive Clark, machine, have been added to the exhibit in that they were employees on said date. That is correct, Mr. Hoban?

Mr. Hoban: All those corrections were made by the Board's field examiner, who checked the record, and they are correct corrections.

* * * * * * *

[fol. 1096] Benjamin E. Gordon, a witness called in rebuttal by the National Labor Relations Board, having been previously sworn, was examined and testified as follows:

Direct examination.

Trial Examiner Guffey: You have been sworn?
The Witness: Yes, I have.

By Mr. Hoban:

Q. Now, Mr. Gordon, I am going to examine you concerning the notices which were introduced in evidence and the correspondence between you and Mr. Franks with reference to them, and if you have any notes of your own which will refresh your recollection on these points, I have no objection to your using them and I will not attempt to examine them myself. You may refer to them whenever you think they will assist you. I direct your attention to Respondent's Exhibit 14, and ask you whether prior to sending that letter to Mr. Franks on July 31st you attended a conference at Dr. Myers' office at which Mr. Franks was not present?
[fol. 1097] A. I did.

Q. Do you know the date on which that conference took place?

A. I think it was that day or the day before. I may be able to give you the exact date. I believe it was on July 30th. No, July 31st we conferred at the Labor Board.

Q. Was Mr. Colbert with Dr. Myers on that day?

A. He was.

Q. Now directing your attention again to the exhibit and the attached notice, during that conference with Dr. Myers, didn't you raise objections to the second full paragraph in the one beginning: "The company denies any statements to the effect that any employee will lose his employment as a result of the workers choosing a union to represent them"?

A. I think I did raise some objection to it.

Q. During the conference did you raise any objections to the following paragraph: "The company hereby advises

its employees that there will be no shut down of the plant caused by employees selecting a union.''

A. Yes, I raised objections to that.

Q. What were the objections that you raised to the third paragraph?

A. Well, if I recall my objections, when I say I raised objections, I told them I was not sure whether that would [fol. 1098] be satisfactory to my client; and the preceding paragraph, I told them my own feelings were that denying a statement in a notice seemed to indicate statements were made and for that reason I didn't know whether my client would be willing to even think of that sentence in there.

Q. Did Dr. Myers tell you that if the notice in the form in which it was drafted was posted that the charges which were pending before the company would be considered adjusted?

A. Yes, he did.

Q. Now subsequently, did you attend a conference at the Labor Board office at which there was a discussion of the notices, or the notice, which is attached to Respondent's Exhibit 17, the conference being attended by yourself, Mr. William S. Gordon, on August 22nd, 1941?

A. Do you mean at which Mr. William S. Gordon, Dr. Myers and I were present?

Q. Was there a conference at which Mr. Salerno was present?

A. Well, I conferred on August 19th at the Labor Board office and there were various people in and out of the conference including Bill Gordon, Mr. Becker, and Selerno was there, and you, too.

[fol. 1099] Q. My notes indicate that you are correct, that there was a conference on August 19, 1941, attended by those people that you have mentioned, including myself.

A. I had a talk with you previous to that at the Labor Board, also.

Q. With Mr. Gordon?

A. With you, Mr. Hoban. I don't recall anyone else was there.

Q. Well, in any case, was this notice which was attached to Exhibit 17 dictated by Mr. William Gordon during that August 19th conference?

A. I think we all had part in dictating it, but we were having some difficulty concerning some of the language. I think

the final notice as drafted and which the Board requested to be posted was the work mainly of William Gordon.

Q. After that notice which is attached to Respondent's Exhibit 17 was discussed at the conference, did you state that the language in Section 7 of the National Labor Relations Act should be used in place of the first three paragraphs of that notice?

A. Well, as I recall it, this is the notice. The notice attached to Respondent's Exhibit 17 is the final notice that the Board wanted posted, but during our conference,—there [fol. 1100] were a lot of us having something to do with the dictating of the notice, and I think we started out, but at some time during the conference I suggested that the language of Section 7 of the Act and Section 8 (1) of the Act might take care of these first few paragraphs and I don't think that anything was definitely decided on that.

Q. Didn't Dr. Myers state that you might substitute for the first three paragraphs Section 7 of the Act and then state that the Board would not approve a notice which did not contain at least the substance of the last sentence of the next to the last paragraph which would be a sentence preceding the long parenthesis?

A. I know there was talk about it, but I don't think it was definitely stated that we could substitute it. Again, though, I do not think there was any crying issue raised on that question because the notice itself was not really objectionable. The whole thing hinged on this one sentence you are referring to. That is the sentence "Operations of the factory will in no way be affected by the results of the election." Later that particular sentence was arrived at after the use of any number of sentences and finally I believe and I am quite certain, that sentence was Bill Gordon's idea and Dr. Myers was willing to have it in the notice and would be satisfied if it was contained in the notice and said [fol. 1101] it must be contained in the notice; that that or some similar sentence having to do with stating that the plant would not shut down because of the union; that, Dr. Myers said, must be in the notice or this sentence would be satisfactory.

Q. But there was no adamant position by Dr. Myers on that matter with respect to whether that had to be used or whether Section 7 of the Act might be inserted in its place?

A. As I carried away the notice that had been worked on there, dictated and drafted, this was the language of it, but I think it is right to say that the position of Dr. Myers on the first three paragraphs from what he said would have probably been if we substituted Section 7 and Section 8 (1) for them, he would not have been too perturbed about it, but the main thing was this sentence regarding operations of the factory.

Q. Now one or two days after that conference from which you took away the notice attached to Respondent's exhibit, did you have a telephone conversation with William Gordon regarding the matter of notices?

A. Yes, I had a conversation with William Gordon on August 21st.

Q. During the telephone conversation, didn't you read to Mr. Gordon another notice which contained Section 7 [fols. 1102-1163] and Section 8 (1) which you had drafted sometime between the conference of the 19th and the 21st?

A. I did, and Mr. Gordon told me no notice other than that suggested by Dr. Myers would be satisfactory.

Q. Now was the notice which you read to Mr. Gordon over the telephone on the 21st the notice which is attached to Respondent's Exhibit 18?

A. I think it was.

Q. Now after Mr. Gordon had stated to you what his position was with respect to the notice on the telephone, did you afterwards have a conference at your office which was attended by William Gordon and Mr. Abe Franks?

A. Yes.

Q. And at that conference this question of notice was again discussed, wasn't it?

A. Yes, it was.

Q. And didn't Mr. Gordon ask that a notice be posted repudiating the statement that the plant would shut down if the union won the election and denying the truth of the statement?

A. My definite recollection is that the notice Mr. Gordon wanted was the same notice that he had finally completed and prepared at the conference at the Labor Board, I think on August 19th. On August 19th,—yes.

[fol. 1164] BOARD'S EXHIBIT No. 2

UNITED STATES OF AMERICA, BEFORE THE NATIONAL LABOR RELATIONS BOARD FIRST REGION

Case No. I-C-1797

In the Matter of FRANKS BROS. COMPANY and AMALGAMATED CLOTHING WORKERS OF AMERICA (C. I. O.)

COMPLAINT

It having been charged by Amalgamated Clothing Workers of America (C. I. O.), 73 Tremont Street, Boston, Massachusetts, that Franks Bros. Company, herein called the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, by the Regional Director for the First Region (Boston, Massachusetts), as agent of the Board, designated by National Labor Relations Board Rules and Regulations—Series 2, as amended, Article IV, Section 1, hereby issues its Complaint and alleges the following:

1. The Respondent is and has been since 1924 a corporation organized under and existing by virtue of the laws of the Commonwealth of Massachusetts and is now and has been continuously engaged at a place of business at 46 Chandler Street, in the City of Lawrence, County of Essex, Commonwealth of Massachusetts, hereinafter called the Lawrence Plant, in the manufacture, sale and distribution of men's suits, overcoats and topcoats.

2. The Respondent, in the course and conduct of its business at the Lawrence Plant, causes and has continuously caused large quantities of raw materials including woolens, [fol. 1165] worsteds, rayon and miscellaneous findings, used by it in the manufacture of its finished products, to be purchased and transported in interstate commerce from and through states of the United States other than the Commonwealth of Massachusetts to the Lawrence Plant in the Commonwealth of Massachusetts, and causes and has continuously caused large quantities of its finished products, including men's suits, overcoats and topcoats, to be sold and transported in interstate commerce from the Lawrence

Plant in the Commonwealth of Massachusetts to, into and through states of the United States other than the Commonwealth of Massachusetts.

3. Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, hereinafter called the Union, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

4. All production and maintenance employees of the Respondent engaged at the Lawrence Plant, excluding executives, supervisory employees and clerical employees, at all times mentioned herein constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subsection (b) of the Act.

5. On or about June 12, 1941, a majority of the employees of the Respondent, in the unit described in paragraph 4 above, had designated and selected the Union as their representative for the purposes of collective bargaining with the Respondent. The Union was, on or about June 12, 1941, and at all times thereafter has been, the representative for the purposes of collective bargaining of a majority of the employees in said unit, and by virtue of Section 9, subsection (a) of the Act, was, on or about June 12, 1941, and at all times thereafter has been, the exclusive representative of all employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

[fol. 1166] 6. On or about June 12, 1941, and at various times thereafter, the Union requested said Respondent, through its officers, agents and employees, to bargain collectively with the Union as the exclusive representative of all the employees in such unit in respect to rates of pay, wages, hours of employment and other conditions of employment.

7. On or about June 12, 1941, and at all times thereafter, the Respondent, through its officers, agents and employees, did refuse and is now refusing to bargain collectively with the Union as the exclusive representative of all the employees in such unit in respect to rates of pay, wages, hours of employment and other conditions of employment.

8. By the acts set forth in paragraph 7 hereof, the Respondent did refuse and does now refuse to bargain col-

lectively with the Union, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

9. On or about August 16, 1941, the Respondent, by and through its officers, agents and employees, including Minnie Yosper, forelady, did discharge Joseph Baglieri, presser, and at all times thereafter, until on or about November 1, 1941, did refuse to reinstate said Joseph Baglieri to his employment at the Lawrence Plant.

10. On or about September 9, 1941, the Respondent, by and through its officers, agents and employees, including Harry Yosper, foreman, and Minnie Yosper, forelady, did discharge Rose Pinto, machine operator, and at all times thereafter, until on or about February 1, 1942, did refuse to reinstate said Rose Pinto to her employment at the Lawrence Plant.

11. The Respondent did discharge Joseph Baglieri and Rose Pinto, and each of them, and did refuse to reinstate said Joseph Baglieri and said Rose Pinto, and each of them, as set forth in paragraphs 9 and 10 above, because of their membership in and activities on behalf of the Union, and because they did engage in concerted activities with other employees for their mutual aid and protection.

[fol. 1167] 12. The Respondent, by the acts set forth in paragraphs 9, 10 and 11 above, and by all of said acts and each of them, did discriminate and is now discriminating in regard to the hire and tenure of employment of Joseph Baglieri and Rose Pinto, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

13. During July and August, 1941, and at various times thereafter, down to and including the date of the issuance of this complaint, the Respondent, by and through its officers, agents and employees, did interfere with, restrain and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act in that:

(a) From on or about July 21, 1941, to on or about July 26, 1941, the Respondent, by its officers, agents and employees, including Harry Yosper, foreman, and Minnie Yosper, forelady, did question its employees individually concerning their membership in and ac-

tivities on behalf of the Union and did make statements to such employees showing its hostility to the Union and calculated to discourage membership in the Union;

(b) From on or about July 21, 1941, to July 25, 1941, the Respondent, by its officers, agents and employees, including Harry Yosper, foreman, Minnie Yosper, forelady, and Jacob Freeman, foreman, did urge its employees to vote against the Union in a Consent Election which was to be held on July 25, 1941, under the direction and supervision of the Regional Director for the First Region, Boston, Massachusetts;

(c) From on or about July 21, 1941, to July 25, 1941, the Respondent, by its officers, agents and employees, including Harry Yosper, foreman, Minnie Yosper, forelady, and Jacob Freeman, foreman, did threaten its employees that the Lawrence Plant would close and [fols. 1168-1172] they would lose their employment if the Union won said Consent Election; and

(d) On or about August 1, 1941, the Respondent, by its officers, agents and employees, including Minnie Yosper, forelady, did go to the home of Guiseppe Baglieri, father of Joseph Baglieri referred to above, and did urge said Guiseppe Baglieri to have said Joseph Baglieri resign from the Union and cease participation in union activity.

14. By the said acts, and each of them, set forth in paragraphs 7, 8, 9, 10, 11, 12 and 13 above, the Respondent did interfere with, restrain and coerce and is now interfering with, restraining and coercing its employees in the exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, and by said acts, and each of them, the Respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

15. The activities of the Respondent set forth in paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 above, occurring in connection with the operations of the Respondent described in paragraphs 1 and 2 above, have a close, intimate and sub-

stantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The aforesaid acts of the Respondent constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (3) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on this second day of March, 1942, issues its Complaint against Franks Bros. Company, the Respondent herein.

[fol. 1173] BOARD'S EXHIBIT No. 3

In the Matter of: FRANKS BROS. COMPANY and AMALGAMATED CLOTHING WORKERS OF AMERICA

Case #I-C-1797

ANSWER

Now comes the respondent in the above mentioned case and makes its answer to the Complaint as follows:

1. Respondent admits the allegations of paragraph 1 of the Complaint.

2. Respondent specifically denies each and every allegation contained in paragraph 2 of the Complaint.

3. The respondent neither admits nor denies the allegations of paragraph 3 of the Complaint, since it is without knowledge of the matters contained therein.

4. Respondent admits the allegations of paragraph 4 of the Complaint.

5. The respondent neither admits nor denies the allegations of paragraph 5 of the Complaint, since it is without knowledge of the matters contained therein.

6. Respondent specifically denies each and every allegation contained in paragraph 6 of the Complaint, but further answering respondent admits that on or about June 12, 1941 and on or about June 19, 1941, and at no time there-

after, the union requested said respondent to enter into an agreement with the said union in respect to rates of pay, wages, hours of employment and other conditions of employment of employees of said respondent.

7. Respondent specifically denies each and every allegation contained in paragraph 7 of the Complaint, but further answering respondent admits that on or about June 12, 1941 and on or about June 19, 1941 and at no time thereafter, it refused to enter into an agreement with the union in respect to rates of pay, wages, hours of employment and other conditions of employment of employees of said respondent.

8. Respondent specifically denies each and every allegation contained in paragraph 8 of the Complaint.

9. Respondent specifically denies each and every allegation contained in paragraph 9 of the Complaint, and respondent further answers that Joseph Bagliere was never discharged by respondent or any of its agents and that in fact the said Joseph Bagliere quit his employment on August 16, 1941. Respondent further answers that at all times since August 16, 1941, respondent has been and is now willing to employ the said Joseph Bagliere.

10. With respect to the allegations of paragraph 10 of the Complaint, the respondent admits that on or about September 9, 1941, it discharged Rose Pinto, machine operator, but denies each and every other allegation contained in paragraph 10 of the Complaint.

11. Respondent specifically denies each and every allegation contained in paragraph 11 of the Complaint.

[fol. 1174] 12. Respondent specifically denies each and every allegation contained in paragraph 12 of the Complaint.

13. Respondent specifically denies each and every allegation contained in paragraph 13 of the Complaint.

14. Respondent specifically denies each and every allegation contained in paragraph 14 of the Complaint.

15. Respondent specifically denies each and every allegation contained in paragraph 15 of the Complaint.

16. Respondent specifically denies each and every allegation contained in paragraph 16 of the Complaint.

Franks Bros. Company, by A. A. Franks, Clerk.

Boston, Mass., March 13, 1942.

Then personally appeared the above named A. A. Franks, Clerk of Franks Bros. Company, and made oath that the foregoing subscribed by him is true to the best of his knowledge and belief.

Before me.

Benjamin E. Gordon, Notary Public.

[fol. 1175] EXHIBITS

B 10

May 27

Name, Miss Rose Yazbek.

[fol. 1176] B 12-3

Name, Anne Baglieri.

[fol. 1176-A] B 12-4

May 12, 1941

Name, Joseph B. Bagliere.

[fol. 1177] B 12-5

3/27/41

Name, Giorge Bialek.

[fol. 1178] B 12-6

Feb. 19, 1941

Name, Rose Blake.

[fol. 1179] B 12-7

March 22, 1941

Name, Vahey Boyajion.

[fol. 1180] B 12–8

June 9, 1941

Name, Joseph Calarese.

[fol. 1181] B 12–9

February 10, 1941

Name, Josephine Eleanor Caruba.

[fol. 1182] B 12–10

February 10, 1941

Name, Lauretta Caruba.

[fol. 1183] B 12–11

6-2-41

Name, Sylvia Chagnon.

[fol. 1184] B 12–12

2/11/41

Name, Genie Ciofolo.

[fol. 1185] B 12–13

March 17, 1941

Name, Jane Derbogarian.

[fol. 1186] B 12–15

May 26, 41

Name, Rose Essoran.

[fol. 1187] B 12–16

May 28, 41

Name, Mrs. Anna Fichera.

[fol. 1188] B 12–17

Feb. 16, 1941

Name, Harry A. Garabedian.

[fol. 1189] B 12–18

April 23, 1941

Name, Armand J. Gilman.

[fol. 1190] B 12–19

April 24, 1941

Name, Leo J. Gilman.

[fol. 1191] B 12–20

Name, Leonie Grenier.

[fol. 1192] B 12–21

March 22, 1941

Name, Julius Kondrat.

[fol. 1193] B 12–22

3/4/41

Name, Rose A. Lafleur.

[fol. 1194] B 12–23

April 2

Name, Antonette Laudani.

[fol. 1195] B 12–24

2/3/41

Name, Sarah Lomaso.

[fol. 1196] B 12–25

April 8, 1941

Name, Anne Malandrino.

[fol. 1197] B 12–26

March 25/41

Name, Angelina Malandrino.

[fol. 1198] B 12–27

May 28-41

Name, Anna McMillan.

[fol. 1199] B 12–29

Name, Carmela Messina.

[fol. 1200] B 12–30

27/3/41

Name Josephine Midolo.

[fol. 1201] B 12–31

Name, Peter Naffado.

[fol. 1202] B 12–32

Feb. 16

Name, Souren Perperian.

[fol. 1203] B 12–33

May 27

Name, Rose Pinto.

[fol. 1204] B 12–34

5/28/41

Name, Christina Pisano.

[fol. 1205] B 12–35

6-6-41

Name, Sam Radie.

[fol. 1206] B 12–36

April 9, 1941

Name, Angelina Randone.

[fol. 1207] B 12-37

5-27-41

Name, Elvira Ricci.

[fol. 1208] B 12–38

5-27-41

Name, Pauline Ricci.

[fol. 1209] B 12–39

Name, Sarah Reina.

[fol. 1210] B 12–40

June 5, 1941

Name, Martha Sachuk.

[fol. 1211] B 12–41

3/14/41

Name, Olive Saliba.

[fol. 1212] B 12–42

June 4, 41

Name Mrs. Rose Larao.

[fol. 1213] B 12–43

Feb. 16, 1941

Name, George Sarkis.

[fol. 1214] B 12–44

5/13

Name, Skippy Shahtanian.

[fol. 1215] B 12–45

March 18, 1941

Name, Sybil Shahtanian.

[fol. 1216] RESPONDENT'S EXHIBIT No. 1

May 27-41

Name, Victoria Rykallah.

[fol. 1217] RESPONDENT'S EXHIBIT No. 8

Statement of Joseph Bagliere

I, Joseph Bagliere, being duly sworn do depose and voluntarily state as follows.

Until on or about August 9, 1941, I worked for Franks Brothers in the pants shop. My job was piece presser. I had worked for the company on and off since I was 16 years of age, about five years ago. Prior to August 9, I had been employed steadily for about six months.

* * * * * * *

I joined the Amalgamated Clothing Workers of America in the latter part of May, 1941. I do not believe that the management knew that I belonged to the Union until a meeting that I attended on or about July 23, about two days before the scheduled election that the Labor Board was to hold at the company. I attended this meeting together with Rose Yasbek, Rose Pinto and a large number of the other employees.

[fol. 1218] On the following day Mrs. Yosper came to me and asked how the meeting was the night before. I told her it was all right. She said "How come you went to the meeting"? I replied as follows: "I can see where the union can do me some good where you have failed." Mrs. Yosper became very angry. She said, "You don't think the union could win, do you?" I replied, "I think it has a good chance." There were a few further words and I went to work.

* * * * * * *

On the same day Harry Yosper stated to me and Peter Naffah, that if the union won the election on August 25, the shop would close down. Harry Yosper has frequently told me that unions were no good, that he had once been in a union and he knew, and other statements of like nature.

* * * * * * *

I have carefully read the above statement and certify that the facts as related are true and correct to the best of my knowledge and belief.

Joseph Bagliere.

Subscribed and sworn to before me this 27th day of September, 1941, at Boston, Mass. Wm. G. Gordon.

[fol. 1219] RESPONDENT'S EXHIBIT No. 14

July 31, 1941.

Mr. Al Franks, Franks Bros. Company, 54 Chandler St., Lawrence, Mass.

DEAR AL:

Confirming our conversation, enclosed herewith you will find copy of notice which Dr. Myers requests that the company post.

If this notice is posted, Dr. Myers has informed me that the unfair labor practice charge will be adjusted.

Sincerely yours, Benjamin E. Gordon.

BEG:Z
Enc.

[fol. 1220] RESPONDENT'S EXHIBIT No. 14-A

Notice to Employees

Section 7 of the National Labor Relations Act states:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The Company denies any statements to the effect that any employee will lose his employment as a result of the workers choosing a union to represent them.

The Company hereby advises its employees that there will be no shut-down of the plant caused by employees selecting a union.

No person will be dsicriminated against in any manner because of membership in a labor organization.

Supervisory employees have been ordered not to obstruct or aid or discuss unions with employees of this Company.

Frank Bros. By —— ——.

Date —— ——.

[fols. 1221-1222] RESPONDENT'S EXHIBIT No. 17

August 19, 1942.

Mr. Al Franks, Franks Bros. Company, 54 Chandler St., Lawrence, Mass.

DEAR AL:

Confirming our conversation of today, the Board desires that the enclosed notice be posted to adjust the unfair labor practice charge.

Please note the portion of the note in parenthesis which reads as follows: "However, if the union wins their election and makes excessive demands on the company, the company may cease operations and close the plant".

On behalf of the company I offered to post the notice provided it contained the portion in parenthesis to meet the objections which you had to the previous notice. However, Dr. Myers stated that he would not permit the quoted sentence to be included in the notice.

Sincerely yours, Benjamin E. Gordon.

BEG:Z
Enc.

[fol. 1223] RESPONDENT'S EXHIBIT No. 22

Names and classifications of employees on payroll of March 5, paid March 13, 1942:

Rose Blake, Machine.
K. Asadoorian, Machine.
Ernesta Mini, Machine.
Simone Noel, Machine.
Rose La Fleur, Machine.
Josephine Caruba, Machine.
Louise Lantagne, Machine.
Lauretta Caruba, Machine.
Anna D[illegible]wesh, Floor girl.
Eva April, Basting Puller.
Sybil Shahtanian, Button-hole Machine.
Anna Malandrino, Machine.
Rose Mistretta, Machine.
Angelina Malandrino, Machine.
Sally Kukorian Machine.
Carmella Messina, Machine.

Nancy Gissaro, Finisher.
Mary Cunha, Finisher.
Adele Cocnis, Finisher.
Araxe Hogopian, Finisher.
Jane Derbosian, Finisher.
Julius Kondrat, Off Presser.
Leonie Grenier, Machine.
Mary Cappello, Machine.
Yvonne Bolduc, Machine.
Vahey Boyajian, Presser.
Angelina Randone, Machine.
Michael Weshonko, Presser.
Azard Shahtanian, Hand Presser.
Roland Becott[illegible], Off Presser.
Mildred Mo[illegible]shian, Cleaner.
Josephine Midolo, Machine.
Raymond Marcoux, Presser.
Mary Haddad, Machine.
Lucy Nocera, Machine.
Sarah Lomaso, Machine.
Frances Renkowski, Machine.
Ida Vaina, Machine.
Grace Zappala, Machine.
Olga Babaian, Machine.
Ronald Becotte, Off Presser.
Ida Gallo, Cleaner.
Grace Di Prima, Machine.
William Santos, Off Presser.
Redman Ellsey, Off Presser.
Eva Noel, Machine.
Nicholas Hadrevis, Shaper.
Norman Saliba, Off Presser.
Olive Saliba Naffah, Tickets and Sorting.
Sarah Reina, Tickets and Sorting.
Abraham Berman, Cutter.
Armand Gilman, Cutter.
[fol. 1224] Joseph Hebert, Janitor assistant.
Frank Hekimian, Cutter.
Harry Garabedian, Cutter.
George Sarkis, Cutter.
Shemovan Perperian, Cutter.
Donald Proctor, Shipper.
Paul Privitera, Shipper.
Jacob Friedman, Coat Foreman.

Wojeciech Bialek, Janitor.
Eugenia Ciofolo, Machine.
Nivart Moasesian, Machine.
Sylvia Chagnon, Machine.
Antonina Bagliere, Machine.
Luke Kukorian, Vest Foreman.
Sonia Bedrosian, Machine.
Margaret Grasso, Machine.
Rose Plonowska, Machine.
Elizabeth Mooshian, Button Sewer.
Harry Yosper, Pant Foreman.
Minnie Yosper, Floor Girl.
Arthur Robidoux, Off Presser.
Eva Assad, Cleaner.
Jacqueline Atamian, Cleaner.
Rose Robidoux, Machine.
Henry Bolduc, Off Presser.
George Piper, Presser.
Rose Saro, Machine.
Anna McMillan, Machine.
Armenag Ohanian, Presser, out hat week (sick).
Roger Moerloos, Off Presser.
Alfreda Bruno, Machine.
Christina Di Lavoie, Machine.
Anna Fichera, Machine.
Martha Sachuk, Machine.
Anna Hatem, Machine.
Mary Caraccio, Machine.
Josephine Kfoury, Machine.
Ruth Lanouette, Timekeeper.
Rose Yazbek, Machine.
Olive Clark, Machine.

[fol. 109] PROCEEDINGS IN CIRCUIT COURT OF APPEALS

On February 11, 1943, the following petition for enforcement was filed:

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—Filed February 11, 1943

To the Honorable, the Judges of the United States Circuit Court of Appeals for the First Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 *et seq.*), respectfully petitions this Court for the enforcement of its order against respondent, Franks Bros. Company, Lawrence, Massachusetts, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Franks Bros. Company and Amalgamated Clothing Workers of America (C. I. O.), Case No. C-2179."

In support of this petition, the Board respectfully shows:

(1) Respondent is a Massachusetts corporation, engaged in business in the State of Massachusetts, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, a complaint, and notice of hearing, respondent's answers thereto, hearing for purpose of taking testimony and receiving other evidence, Intermediate Report, order transferring case to the Board, respondent's and union's [fol. 110] exceptions, and oral argument before the Board, the Board on October 8, 1942, duly stated its findings of fact, conclusions of law, and order directed to respondent, Franks Bros. Company, Lawrence, Massachusetts, its officers, agents, successors, and assigns. So much of the afore-

said order as pertains to this proceeding provides as follows:

ORDER

Upon the basis of the above findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Franks Bros. Company, Lawrence, Massachusetts, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all the production and maintenance employees at its Lawrence plant, excluding executives, supervisors, and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board [fol. 111] finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all the production and maintenance employees at its Lawrence plant, excluding executives, supervisors, and clerical employees in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the re-

spondent will not close its plant or cease its operations in the event that the employees select the Amalgamated Clothing Workers of America, or any other labor organization, as their collective bargaining representative; and (3) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the First Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On October 8, 1942, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Gordon & Gordon, respondent's attorney in Boston, Massachusetts.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this [fol. 112] Court the transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, and order of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, its officers, agents, successors, and assigns, to comply therewith.

National Labor Relations Board, by (S.) Ernest A. Gross, Associate General Counsel.

Dated at Washington, D. C., this 9th day of February 1943.

DISTRICT OF COLUMBIA, ss:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the

contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

(S.) Ernest A. Gross, Associate General Counsel.

Subscribed and sworn to before me this 9th day of February 1943. (S.) Joseph W. Kulkis, Notary Public, District of Columbia. My Commission Expires April 15, 1947. (Seal.)

[fols. 113-114] On the same day, to wit, February 11, 1943, a notice of the filing of said petition and transcript, with a copy of said petition, was duly served upon respondent; and an order was entered by said Circuit Court of Appeals, upon motion, granting leave to proceed under Rule 24 of said Court.

Thereafter, to wit, on February 23, 1943, appendix for petitioner was filed.

Thereafter, to wit, on June 2, 1943, this cause came on to be heard, and was fully heard by the Court, Honorable Calvert Magruder, Honorable John C. Mahoney and Honorable Peter Woodbury, Circuit Judges, sitting.

Thereafter, to wit, on July 27, 1943, the following Opinion of the Court was filed:

[fol. 115] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1942

No. 3872

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

FRANKS BROS. COMPANY, Respondent

Petition for Enforcement of an Order of the National Labor Relations Board

Before Magruder, Mahoney and Woodbury, JJ.

Benjamin E. Gordon, for Respondent.

Robert B. Watts, General Counsel; Ernest A. Gross, Associate General Counsel, Malcolm A. Hoffman, for Petitioner.

OPINION OF THE COURT

July 27, 1943

MAHONEY, J.

Pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U.S.C. 151 *et seq.*) the National

Labor Relations Board has petitioned us for enforcement of its order of October 8, 1942, against Franks Bros. Company, a Massachusetts corporation, with its principal office and place of business at Lawrence, Massachusetts.
[fol. 116] The respondent is engaged in the manufacture, sale and distribution of men's clothing. Samuel Franks is its President, Treasurer and principal stockholder. Abraham A. Franks, his son, is its Secretary. No question is raised in this case as to the interstate character of respondent's business.

The Board found that the respondent on June 12, 1941, and thereafter, refused to bargain collectively with the Amalgamated Clothing Workers of America (C. I. O.), (hereinafter called the union), as the exclusive representative of its employees in an appropriate bargaining unit within the meaning of Section 8 (5) of the Act, and interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, thereby committing an unfair labor practice within the meaning of Section 8 (1). The Board issued its usual cease and desist order ordering the respondent upon request to bargain collectively with the union as the exclusive representative of the employees, and to refrain from interfering with, restraining or coercing its employees and to post notices to this effect.

The respondent challenges the sufficiency of the evidence in support of the Board's conclusions that the union was the exclusive representative of its employees and that it coerced or interfered with their union activities. It contends that a majority of its employees did not designate the union as its exclusive bargaining representative as of June 12, 1941, but that even if this were so, nevertheless, the union did not as of the date of the hearing of this cause before the Trial Examiner have a majority due to the voluntary quitting of some of respondent's employees, and that, therefore, the Board's order that it bargain with the union despite its loss of a majority is invalid.

The evidence introduced in behalf of the Board indicated that the union had engaged in an organizational campaign [fol. 117] commencing in January, 1941, and that by the early part of June a majority of the employees had signed cards designating the union as its bargaining representative. On June 12, 1941, Frank Lerman, Assistant Manager

of the Boston Joint Board, had a conference with Samuel and Abraham Franks at their place of business in Lawrence. Louis Hascall, a union organizer, deputized Lerman to discuss the matter of collective bargaining with the respondent's officers because he was of the opinion that Lerman, through his acquaintance with the Franks, would have a better chance of success in any negotiations with them. At this conference Lerman sought to persuade the Franks to agree to bargain with the union but was unsuccessful. The evidence as to what took place at this conference is conflicting. Lerman testified that he informed the Franks that the union had a majority but that they refused to bargain with it. He further testified that Abraham Franks said that it would be advisable to wait until Christmas before reaching a decision because he was not certain what would be done with the business. The Franks denied that Lerman told them that the union had a majority. Samuel Franks' version is that Lerman was asked whether the union had a majority and that he replied in the negative. Abraham Franks stated that Lerman, in response to a question as to whether the union had a majority, replied that he did not know. A second conference was held between Lerman and Abraham Franks in Boston at the Bradford Hotel during the following week. Lerman testified that in response to a question put to him by Abraham Franks as to whether the union would win an election if one were held, he replied that a majority of the employees had signed cards designating the union as its representative. Lerman stated that Abraham Franks reiterated his suggestion that the union leave respondent alone until Christmas because he didn't [fol. 118] know what was going to be done with the business. Lerman said that he told him then that unless the parties could reach some agreement the union would petition the National Labor Relations Board to certify it as a majority representative. Franks denied that he had stated that the matter should be deferred until Christmas. On the basis of the conflicting testimony the Board concluded that on June 12, 1941, the union had a majority of the cards signed by the employees of respondent designating it as the bargaining representative; that upon Lerman's request that the respondent bargain with the union, it refused and sought to delay the matter until some considerable time thereafter; that he had notified respondent that the union had a ma-

jority and that the respondent by its attempt to delay negotiations until Christmas did not *bona fide* doubt the majority status of the union but merely refused to bargain. Respondent on the other hand categorically denied the testimony offered by Lerman. In the light of this conflicting testimony it is clear that the appellate court is not in a position to weigh the testimony of the witnesses, nor is it permitted to do so. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584 (1941); *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206 (1940); *National Labor Relations Board* v. *Johnson Steel & Wire Co.* (C. C. A. 1st, decided April 1, 1943).

Respondent asserts that the testimony given by Lerman in this regard is unreliable and that throughout examination and cross-examination by counsel he never stated that he told the respondent that the union had a majority. It contends that the Trial Examiner improperly elicited this information from him by asking him leading questions. The fact that the Trial Examiner injected himself into the proceedings by asking Lerman certain questions was not on this record improper. As was said in *Bethlehem Steel Co.* [fol. 119] v. *National Labor Relations Board*, 120 F. (2d) 641, 652 (App. D. C.):

"It is the function of an examiner, just as it is the recognized function of a trial judge, to see that the facts are clearly and fully developed. He is not required to sit idly by and permit a confused or meaningless record to be made."

On June 19, 1941, the union filed a petition for a certification of it as the bargaining representative of respondent's employees. As a result of conferences held at the Regional Office of the National Labor Relations Board, in which counsel for the parties participated, an agreement was entered into for a consent election to be held on July 25, 1941. The Board introduced testimony to show that after the notice of the election was posted in respondent's plant, supervisory employees of respondent sought to undermine the majority status of the union and to prejudice the employees of respondent against it by making statements to the effect that if the union were successful in the forthcoming election, respondent would close down its plant. As a result of this, the union claimed that it cancelled the scheduled election and thereafter it filed charges with the

Board alleging that the respondent committed unfair labor practices.

During July, August and September of 1941, various conferences were held and correspondence exchanged between the respondent and the Board in an effort to settle the dispute. The Board requested the company to post notices stating that "the company hereby advises its employees that there will be no shutdown of the plant caused by the employees selecting a union." Respondent was willing to post the notice but with the additional statement: "However, if the union wins their election and makes excessive demands on the company, the company may cease operations and close the plant." The condition which re- [fol. 120] spondent sought to impose by its request that it be permitted to append its additional statement to the Board's notice was rightly considered by the Board coercive. Abraham Franks testified that at the time he had no idea that the union would make excessive demands nor did he under the then existing conditions expect to close the business. Why respondent should want to qualify the Board's language is unclear unless it thought that the complete statement would have some effect upon the free choice of the employees in their selection of a bargaining agent. We think the Board properly concluded that this was evidence of a continued refusal on the part of the respondent to bargain collectively with its employees.

Respondent contends that the union did not represent a majority of its employees, despite the fact that out of eighty employees who worked for respondent, forty-six had signed cards designating the union as its representative. Its contention is based upon the fact that certain of the cards signed by the employees designated the union and others designated the Boston Joint Board of the Amalgamated Clothing Workers of America. We find no merit in this contention. The Boston Joint Board is composed of seven members from each of the thirteen locals in Boston and vicinity. The National Executive Office of the union consists of representatives of the Joint Boards throughout the country. With this obvious tie-up between the Boston Joint Board of the Amalgamated Workers and the union, it cannot be said that in designating one or the other the employees expected to be represented by different unions. We think the Board was entirely justified in concluding

that the cards designating the union or the joint board could be counted together in determining whether the union had a majority status.

Respondent makes the contention that the union did not have a majority on June 12, 1941, because some of the em-[fol. 121] ployees who signed the designation cards signed under the impression that at some future date they would be allowed to vote for their bargaining representative. Guy Salerno, a union organizer, testified that he explained to certain of the employees that in accordance with the practice of the union an election to determine whether it had a majority of the employees of respondent might be held. We do not see that any of the evidence in this case supports the proposition that the employees designated the union on the condition that they would at some future time be permitted to vote secretly for their bargaining representative.

Respondent urges that certain statements alleged to have been made by its supervisory employees to the effect that if the union were successful in the election the plant would shut down, cannot be attributed to it because it had expressly instructed these employees to refrain from interfering with the employees in their union activities. We think the rule laid down in *H. L. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, is applicable to the case at bar. The statements which the Board found were made by respondent's supervisory employees were clearly coercive and were intended to have the effect of disparaging the union and destroying the employees' confidence in it. As was there said (p. 521):

"The question is not one of legal liability of the employer in damages or for penalties on principles of agency or *respondent superior*, but only whether the Act condemns such activities as unfair labor practices so far as the employer may gain from them any advantage in the bargaining process of a kind which the Act proscribes. To that extent we hold that the employer is within the reach of the Board's order to prevent any repetition of such activities and to remove the consequences of them upon the employees' right to self-organization, quite as much as if he had directed them."

[fol. 122] *Swift & Co.* v. *National Labor Relations Board*, 106 F. (2d) 87 (C. C. A. 10th, 1939).

As to respondent's violation of Section 8 (1), it may be said that the evidence of its attempt to dissuade its employees from remaining in the union by threatening them with a shut down of its plant is pertinent in determining whether respondent interfered with, restrained or coerced its employees in the exercise of their rights under the Act. On the basis of this record we find that there is substantial evidence to support the Board's conclusion.

We now consider respondent's contention that the Board's order is invalid and improper on the ground that the union lost its majority because of the voluntary quitting of some of its employees. The Board in its opinion in reply to this contention makes the following statement in a footnote:

"The respondent introduced into evidence its pay roll of March 5, 1942, by which it appears, as the respondent asserted, at oral argument, that a sufficient number of union members had left the respondent's employ by that date to affect the Union's majority. This alleged loss of majority is not determinative of the remedy to be ordered. We have consistently held that the only means by which a refusal to bargain can be remedied is an affirmative order requiring the employer to bargain with the Union which represented a majority at the time the unfair labor practice was committed."

The respondent contends that the rule enunciated by the Board is not applicable to the facts in this case but that *National Labor Relations Board* v. *Fansteel Metalurgical Corporation*, 306 U. S. 240, should govern our decision. In that case the union was the bargaining representative of the employees. Respondent refused, however, to negotiate with it. Thereupon a sit-down strike resulted and the employer discharged those employees who participated in the strike. The Board ordered the employer to bargain with the union [fol. 123] and the Supreme Court in reversing the Board stated (pp. 261, 262):

"In view of the change in the situation by reason of the valid discharge of the 'sit-down' strikers and the filling of positions with new men, we see no basis for a conclusion that after the resumption of work Lodge 66 [the union] was the choice of a majority of respondent's employees for the purpose of collective bargaining. The Board's order

properly requires respondent to desist from interfering in any manner with its employees in the exercise of their right to self-organization and to bargain collectively through representatives of their own choosing. But it is a different matter to require respondent to treat Lodge 66 in the altered circumstances as such a representative. If it is contended that Lodge 66 is the choice of the employees, the Board has abundant authority to settle the question by requiring an election."

We are of the opinion that the *Fansteel case* is distinguishable from the case at bar. Because of the violence of the striking employees the employer properly discharged them. The union, by the action of its members, forfeited its right to be recognized as the bargaining representative even though at a prior date a majority of the employees had designated it as their representative. An act had intervened from the date upon which it could be said that the union was the majority representative which permitted the employer to discharge a number of its employees and thereby deprive the union of its status as the majority representative.

Respondent cites also *National Labor Relations Board* v. *Karp Metal Products Co., Inc.*, 134 F. 2(d) 954 (C. C. A. 2d, 1943) in support of its position. There it was determined that the union had a majority of employees on June 3, 1941. The Board's order was entered on July 8, 1942. On March 18, 1942, the respondent and the employees' union (a competing union) moved to determine whether the C. I. O. Local which represented a majority of the employees at the [fol. 124] earlier date was still a majority union. In refusing this motion the Board said: "The allegations of these petitions, even if true, are subsequent to and in no way affect the acts complained of, or the legal conclusion to be drawn therefrom". The Second Circuit took the position that while it was not for the appellate court but for the Board to determine how far the respondent's earlier unfair labor practice continued to vitiate any choice of a representative by its employees, nevertheless, the Board should have exercised its judgment and could not ignore the issue when squarely presented to it. The court was of the opinion that its decision was not contrary in any way to *National Labor Relations Board* v. *Lorillard Company*, 314 U. S. 512. While we find considerable merit in the position taken by

the Second Circuit, we are of the opinion that the decision in the *Lorillard case* is in opposition to the view expressed in the *Karp case, supra.*

In the *Lorillard case* before the Board's order was handed down, a motion for leave to intervene was filed by a competing union and a petition for rehearing before the trial examiner was filed by the respondent. It is thus clear that the matter was still pending before the Board as in the *Karp case.* The Board in refusing to consider the subsequent change in the majority status of the earlier majority union expressed itself in the same language which it used in the *Karp case*: "The allegations of these petitions, even if true, are subsequent to and in no way affect the acts complained of or the legal conclusion to be drawn therefrom". 16 N. L. R. B. 684, 699. It went on to say (p. 700), quoting from *Matter of Inland Steel Co.*, 9 N. L. R. B. 783:

"If an order to bargain collectively cannot be deemed an appropriate remedy for the refusal to bargain collectively unless the S. W. O. C.'s majority is kept intact until the Board can issue a decision, the plain policy and intent [fol. 125] of the Act will be defeated. The respondent would be permitted further to evade the obligation of Section 8 (5) by profiting from the discouraging effects of its already accomplished violation of that very obligation. We cannot concede the validity of such a doctrine of futility, and we hold that to effectuate the policies of the Act, the respondent's refusal to bargain must be remedied by an order to bargain, based on the majority obtaining on the date of the refusal to bargain."

The Supreme Court reversed the Sixth Circuit and affirmed the Board on the ground that:

"The Board had considered the effect of a possible shift in membership alleged to have occurred subsequent to the Lorillard's unfair labor practice. But it had reached the conclusion that, in order to effectuate the policies of the Act, Lorillard must remedy the effect of its prior unlawful refusal to bargain by bargaining with the union shown to have had a majority on the date of Lorillard's refusal to bargain. This was for the Board to determine, and the court below was in error in modifying the Board's order in this respect." (p. 513).

In the *Karp case*, the Second Circuit stated that while it was for the Board to effectuate the policies of the Act by issuing an appropriate order, nevertheless, the respondent was entitled to a judgment of the Board as to whether respondent's unfair labor practices continued to vitiate any choice of a representative by its employees. But it appears from the *Lorillard case* that the only consideration which the Board gave to the possible shift in the majority was to say that it would ignore such a shift in order to effectuate the policies of the Act.

The case before us presents a somewhat different factual situation in that the loss of majority was not due to a shift of employee allegiance from one union to another. Had this been the fact there would be no question but that the *Lorillard case* would govern our decision. The Board might properly assume that there existed a causal connection between the unfair labor practices and the loss of the union's [fol. 126] majority. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 83; *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 340. It appears in the case before us that the loss of a majority was due to a voluntary quitting on the part of certain employees of respondent. From the Board's treatment of respondent's argument in this respect, however, it would seem that it is of the view that the loss in majority may be traced to the refusal to bargain with the union on June 12, 1941. The respondent's dilatory tactics, its refusal to recognize the union as a bargaining representative, and its campaign against the union deprived it of the opportunity of strengthening its organization. It demonstrated the union's inability to reach an agreement with the employer with the result that as time went on the enthusiasm of its members waned and it made it more difficult for the union to capture the allegiance of other employees, either old employees who had previously not joined, or new employees who came on after the unfair labor practices were committed. The Board might reasonably conclude that had the union been recognized and installed as bargaining representative of the employees, as the law required, it probably would have retained its majority status by accessions from these sources, despite its loss of members resulting from normal labor turnover. In other words, the Board has taken the position that in a

proceeding of this nature involving a violation of Section 8 (5), it is imperative in order to effectuate the purposes of the Act, that an employer gain no advantage from his dilatory tactics in refusing to bargain collectively with a majority union. The fact that it may be shown that by lapse of time the union had been unable to retain its majority is not a sufficient basis for refusing to order affirmatively that the respondent bargain with the union. We are [fol. 127] of the view that the language of the Supreme Court in the *Lorillard case* compels us to affirm the Board once it has reached such a conclusion.

A decree will be entered enforcing the order of the Board.

On the same day, to wit, July 27, 1943, the following Decree was entered:

DECREE—July 27, 1943

This cause came on to be heard June 2, 1943, upon the petition for enforcement of an order of the National Labor Relations Board, and was argued by counsel.

Upon consideration whereof, It is now, to wit, July 27, 1943, here ordered, adjudged and decreed as follows: The order of the National Labor Relations Board of October 8, 1942, with the exception of paragraph 2 (c), is hereby affirmed and enforced.

It is further ordered that Franks Bros. Company notify the regional director for the first region in writing within ten (10) days of this Decree what steps it has taken to comply with said order.

By the Court,
(S.) Roger A. Stinchfield, Chief Deputy Clerk.

Thereafter, to wit, on August 6, 1943, the two following Orders of Court were entered:

ORDER OF COURT—August 6, 1943

Upon motion of respondent, It is ordered that the decree [fol. 128] entered by this Court herein on July 27, 1943, be, and the same hereby is, stayed until further order of Court to permit the respondent to file a petition for rehearsing.

By the Court,
(S.) Arthur I. Charron, Clerk,

ORDER OF COURT—August 6, 1943

Upon motion of respondent, It is ordered that the time for filing a petition for rehearing herein be, and the same hereby is, enlarged to, and including, August 23, 1943.

By the Court,

(S.) Arthur I. Charron, Clerk.

Thereafter, to wit, on August 23, 1943, a petition for rehearing was filed by respondent, which was denied September 13, 1943, by the following Order of Court:

ORDER OF COURT—September 13, 1943

It is ordered that the petition for rehearing filed August 23, 1943, be, and the same hereby is, denied.

By the Court,

(S.) Arthur I. Charron, Clerk.

Thereafter, to wit, on September 15, 1943, the following Order of Court was entered:

ORDER OF COURT—September 15, 1943

Upon motion of respondent, It is ordered that the stay of the decree of August 6, 1943, be continued until further order of court, upon the condition that a petition for a writ [fol. 129] of certiorari is filed in the U. S. Supreme Court by November 1, 1943, and notice of such filing is promptly filed in this court.

By the Court,

(S.) Arthur I. Charron, Clerk.

Thereafter, to wit, on November 1, 1943, the following Record Stipulation was filed:

RECORD STIPULATION—(Filed November 1, 1943)

Subject to This Court's Approval It Is Hereby Stipulated and Agreed by and between the attorneys for the above-named parties that for the purposes of the petition for a writ of certiorari, the printed record may consist of the following:

(1) The printed volume filed in the United States Circuit Court of Appeals for the First Circuit entitled, "Appendix to Petitioner's Brief."

(2) The supplemental proceedings before the United States Circuit Court of Appeals for the First Circuit.

It Is Further Stipulated and Agreed that for the purpose of the petition for a writ of certiorari the parties may refer to the portions of the certified typewritten transcript of the record not included in the printed record, and

It Is Further Stipulated and Agreed that petitioner will cause the Clerk of the United States Circuit Court of Appeals for the First Circuit to file with the Clerk the entire transcript of record certified and filed by the Board in the said Court of Appeals and that in the event that the petition for writ of certiorari be granted the printed record [fol. 130] shall consist of the proceedings in the Court below and such portions of the entire transcript of record as certified by the Board to the Court below as the respective parties may designate.

(S.) Charles Fahy, Solicitor General of the United States.

Dated at Washington, D. C., this 25 day of October, 1943.

(S.) Benjamin E. Gordon, Attorney for Petitioner.

Dated at Boston, Mass., this 30th day of October, 1943.
1 Nov. '43. Approved:

(S.) C. Magruder, C. J.

On the same day, to wit, November 1, 1943, the following Order of Court was entered:

ORDER OF COURT—November 1, 1943

Upon stipulation of the parties that the record to be filed with a petition for certiorari shall be accompanied by the original typewritten transcript of record, It is ordered that the Clerk transmit to the Clerk of the Supreme Court the original transcript of record in accordance with said stipulation, said original transcript of record to be returned to this Court after the case is finally disposed of in the U. S. Supreme Court.

By the Court,

(S.) Arthur I. Charron, Clerk.

[fol. 131] On the same day, to wit, November 1, 1943, the following Order of Court was entered:

ORDER OF COURT—November 1, 1943

Upon motion of respondent, It is ordered that the stay of the decree of August 6, 1943, be, and the same hereby is, further stayed until further order of court upon condition that a petition for a writ of certiorari is filed in the U. S. Supreme Court by December 1, 1943, and notice of such filing is promptly filed in this Court.

By the Court,

(S.) Arthur I. Charron, Clerk.

CLERK'S CERTIFICATE

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the foregoing pages, numbered 1 to 131, inclusive, contain and are a true copy of the Appendix to Petitioner's Brief and all proceedings in the cause in said Court, heard and determined, numbered and entitled,

No. 3872

NATIONAL LABOR RELATIONS BOARD, Petitioner

v.

FRANKS BROS. COMPANY, Respondent

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this fourth day of November, A. D. 1943.

Arthur I. Charron, Clerk. (Seal.)

[fol. 1247] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 10, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted, and the case is transferred to the summary docket and assigned for hearing immediately following No. 265.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 1248] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO RECORD—Filed February 18, 1944

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the printed record herein shall consist of the following:

1. The appendix to the Brief of the National Labor Relations Board in the court below.

2. The following additional portions of the transcript of testimony (all references are inclusive):

page 182, line 3 to page 182, line 25
page 245, line 21 to page 246, line 9
page 288, line 5 to page 291, line 22
page 425, line 23 to page 426, line 4
page 428, line 6 to page 428, line 7
page 892, line 10
page 1087, line 1 (words "Mr. Gordon")
page 1087, line 5 to page 1089, line 12
page 1096, line 6 to page 1102, line 25

[fol. 1249] 3. The following additional exhibits or portions of exhibits:

Board's complaint (part of Bd. Exh. 2).
Board's Exhibit 3 (Company's answer).
Board's Exhibit 10 (Union designation of Yazbek).
Board's Exhibits 12-3 to 12-13, inclusive, 12-15 to 12-27, inclusive, and 12-29 to 12-45, inclusive (Union designations).
Respondent's Exhibit 1 (Union designation of Rizkallah).

[Board's Exhibit 10, Board's Exhibits 12-3 to 12-13, 12-15 to 12-27, and 12-29 to 12-45, inclusive, and Respond-

ent's Exhibit 1, need not be printed, but the names of the persons signing the appropriate union cards may be given, together with the date, if any, of signing.]

Following portions of Respondent's Exhibit 8 (Statement of Joseph Baglieri):

Preliminary paragraph, starting "I, Joseph Baglieri"; second paragraph, starting "Until on or about August 9, 1941"; fifth paragraph, starting "I joined"; first 7 lines of sixth paragraph, starting "On the following day" and ending "and I went to work"; seventh paragraph, starting "On the same day"; ninth paragraph, starting "I have carefully read"; signature and attestation.

Respondent's Exhibits 14 and 14a (letter dated July 31, 1941, from Gordon to Franks, and enclosed notice).

Respondent's Exhibit 17 (letter dated August 19, 1941, from Gordon to Franks).

Respondent's Exhibit 22 (Pay roll of March 5), including name "Armenag Ohanian" through which line has been drawn in original exhibit.

4. The proceedings had in the court below.

Dated at Washington, D. C., this 16 day of February, 1944.

Charles Fahy, Solicitor General of the United States.

Dated at Boston, Massachusetts, this 14th day of February, 1944.

Benjamin E. Gordon, Attorney for Franks Bros. Company.

Endorsed on cover: File No. 48,014. U. S. Circuit Court of Appeals, First Circuit. Term No. 521. Franks Bros. Company, Petitioner, vs. National Labor Relations Board. Petition for a writ of certiorari and exhibit thereto. Filed December 4, 1943. Term No. 521, O. T. 1943.

FILE COPY

Office Supreme Court, U. S.
DEC 4 1943.
CHARLES ELMORE CROPLEY
CLERK

No. 521

In the

Supreme Court of the United States.

OCTOBER TERM, 1943.

FRANKS BROS. COMPANY, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, AND SUPPORTING BRIEF.

ARTHUR V. GETCHELL,
Attorney for Petitioner.

BENJAMIN E. GORDON,
Of Counsel.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

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In the

Supreme Court of the United States.

OCTOBER TERM, 1943.

FRANKS BROS. COMPANY, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States.

Petitioner, Franks Bros. Company, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit, entered in this cause on July 27, 1943, enforcing the order of the National Labor Relations Board of October 8, 1942, directed to the petitioner, with the exception of paragraph 2 (c), and further ordering the petitioner to notify the Regional Director of the First Region of the Board in writing within ten (10) days of the Court's decree what steps it has taken to comply with said order.

Question Presented.

The sole question presented is whether an employer shall be required to bargain collectively with a union as the exclusive representative of the employees in an appropriate bargaining unit which does not, at the time of issuance of the order of the Board, represent a majority of such employees and where the loss of majority has not occurred by reason of any unfair labor practices on the part of the employer.

Petitioner's Position.

Petitioner's position is that where, according to the record in the proceeding, a union does not represent a majority of all the employees in an appropriate bargaining unit at the time of the issuance of an order of the Board and where the loss of majority was not caused by unfair labor practices on the part of the employer, the employer should not be required upon request to bargain collectively with such union as the exclusive representative of all the employees in such unit.

Statute.

The statute pertinent to this cause is the National Labor Relations Act, 49 Stat. 449, 29 U.S.C. sections 151-166 (1940).

Statement of the Case.

This case involves the enforcement by the Circuit Court of Appeals for the First Circuit of an order of the National Labor Relations Board. A more complete statement is in

the accompanying Brief in Support of this Petition ("Statement of the Case," pp. 5-6).

Reasons for Granting the Writ.

The decision of the Circuit Court of Appeals is believed to be in conflict with the applicable decisions of this Court and more particularly with the decision of this Court in the case of *N.L.R.B.* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240; 59 S. Ct. 490.

The decision embodies an important principle of federal law concerning which Circuit Courts of Appeals appear to be in conflict. It is of public importance that its spirit be not disregarded or minimized, as is done by this decision of the Circuit Court of Appeals.

Wherefore it is respectfully requested that this petition for a writ of certiorari be granted.

ARTHUR V. GETCHELL,
Attorney for Petitioner.

BENJAMIN E. GORDON,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The opinion of the Circuit Court of Appeals for the First Circuit filed on September 13, 1943, denying petitioner's request for rehearing appears in the Original Certified Copy of Appendix to Petitioner's (Respondent herein) Brief and all Proceedings to and including November 4, 1943. The opinion of the Circuit Court of Appeals, filed on July 27, 1943, decreeing enforcement of the order of the National Labor Relations Board also appears in the Original Certified Copy beforementioned. The order of the National Labor Relations Board appears in the same copy.

Jurisdiction.

The jurisdiction of this Court is involved under Section 10 (e) of the National Labor Relations Act, 49 Stat. 449, and Sections 239 and 240 of the Judicial Code as amended, U.S.C. Title 28, Sections 346 and 347.

Question Presented.

This is stated in the petition (*ante*, p. 2).

Statute Involved.

This is stated in the petition (*ante*, p. 2).

Statement of the Case.

On June 19, 1941, a petition for investigation and certification of representatives of employees of petitioner was

filed with the First Regional Office of the respondent at Boston, Massachusetts, Case No. I-R-725, by the Amalgamated Clothing Workers of America, hereafter called the Union (Bd. Ex. 9). On July 24, 1941, the Union withdrew the said petition[1] and filed charges of unfair labor practices against the petitioner in Case No. I-C-1797, known as Case No. C-2179 before the Board (Resp. Ex. 2). The said charges alleged acts of interference by supervisory employees of petitioner on or about July 24, 1941, in violation of Section 8 (1) of the National Labor Relations Act, hereafter referred to as the "Act."

On September 27, 1941, the Union amended the aforementioned charges to allege violation by petitioner of Section 8 (1), (3) and (5) of the Act. The said amended charge alleged violation of Section 8 (1) to have occurred on or about July 21, 22, 23, 24 and 25, 1941.

The alleged violation of Section 8 (3) involved the discriminatory discharges of three employees, and the alleged violation of Section 8 (5) involved a charge of refusal to bargain on or about June 12, 1941, and at all times thereafter with the Union as the exclusive bargaining representative of the employees of petitioner (Resp. Ex. 3).

On February 28, 1942, a second amended charge was filed with the respondent by the Union. The second amended charge alleged in part that petitioner violated Section 8 (3) of the Act by discriminatorily discharging two employees and refusing to reinstate said employees up to certain dates (Bd. Ex. 2).

On March 2, 1942, the respondent issued its complaint in this proceeding. The complaint alleged that petitioner had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3) and (5) and Sec-

[1] Reference to exhibits as Board or Respondent Exhibits is to exhibits identified as such at the hearing before the Board.

tion 2 (6) and (7) of the Act (Bd. Ex. 2). Thereafter, on March 13, 1942, petitioner filed its answer denying the unfair labor practices charged and challenging the jurisdiction of the Board (Bd. Ex. 3).

A hearing was held at Lawrence, Massachusetts, from March 16 to March 24, 1942. On April 29, 1942, the Trial Examiner filed his intermediate report, finding violations of Section 8 (1) and (5) of the Act, but finding no violation of Section 8 (3), and recommending that petitioner cease and desist from such violations and take certain affirmative actions.

On May 28, 1942, the respondent granted petitioner's request to be heard in oral argument before the Board and scheduled the hearing for the purpose of oral argument on June 16, 1942. Thereafter petitioner filed exceptions to the intermediate report. Oral argument was postponed from June 16, 1942, and finally had before the respondent on June 30, 1942, and the respondent issued its decision and order on October 8, 1942.

Thereafter the respondent petitioned the Circuit Court of Appeals for the First Circuit for enforcement of its order. The cause was heard on June 2, 1943, and on July 27, 1943, a decree of the Court was entered enforcing the order of the respondent with the exception of paragraph 2 (c) and further ordering the petitioner to notify the Regional Director for the First Region of respondent in writing within ten (10) days what steps it had taken to comply with said order. On August 6, 1943, the Court ordered a stay of its decree to permit petitioner to file a petition for rehearing.

On August 23, 1943, a petition for rehearing was filed by petitioner, which was denied by the order of the Court filed on September 13, 1943. Thereafter, on September 15, 1943, the stay of decree of August 6, 1943, was further continued.

Petitioner's Position.

Petitioner's position here has been stated in the petition (*ante*, p. 2).

Argument.

The petitioner should not be ordered to bargain collectively with the Union as the exclusive representative of all the production and maintenance employees at petitioner's Lawrence, Massachusetts, plant, excluding executives, supervisors and clerical employees, because of the fact that by the time of the hearing before respondent the Union no longer represented a majority of such employees and such loss was not due to any unfair labor practices of petitioner.

A. Representation in the Unit as of March 5, 1942, the Date of Hearing Before Respondent.

The respondent found that a sufficient number of the Union's members had ceased working for the petitioner to deprive the Union, as of March 5, 1942, of its majority status (B.A. 25).[2] There is only one case which has been decided by the United States Supreme Court which has ruled squarely on this issue. In the Fansteel Metallurgical Corporation case[3] the Supreme Court stated:

> "In view of the change in the situation by reason of the valid discharge of the 'sit-down strikers' and the filling of positions with new men, we see no basis for a conclusion that after the resumption of work Lodge

[2] Board Appendix.

[3] *N.L.R.B.* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240; 59 S. Ct. 490.

66 was the choice of a majority of Respondent's employees for the purpose of collective bargaining. The Board's order properly requires Respondent to desist from interfering in any manner with its employees in the exercise of their right to self-organization and to bargain collectively through representatives of their own choosing. But it is a different matter to require Respondent to treat Lodge 66 in the altered circumstances as such a representative. If it is contended that Lodge 66 is the choice of the employees, the Board has abundant authority to settle the question by requiring an election."

In the Fansteel case the Board had found that Lodge 66 had a majority on February 17, 1937, and found a refusal to bargain on the part of the employer in violation of Section 8 (5) of the Act. Thereafter, because of the unfair labor practices of the employer, the employees went on strike. The loss in majority occurred thereafter by the valid discharge of sit-down strikers.

Therefore, in the instant case, even if the Circuit Court of Appeals was right in sustaining respondent's finding of a refusal to bargain as of June 12, 1941, as it did, it is the contention of the petitioner that an order to recognize and to bargain collectively with the Union as the exclusive representative of the employees is not justified by the evidence and the law.

In its findings in regard to this point the respondent referred to the Lorillard case and others decided by the Supreme Court (B.A. 26).[4] In the Lorillard case the Court in a *per curiam* decision cited the following cases as authority: *N.L.R.B.* v. *Bradford Dyeing Association*[5] and

[4] *N.L.R.B.* v. *P. Lorillard Co.*, 314 U.S. 512; 62 S. Ct. 397.
[5] 310 U.S. 318, 339-340.

I.A.M. v. *N.L.R.B.*,[6] each of which was referred to by respondent.

It is important to note that in each of said cases cited by the Supreme Court in the Lorillard case there is a distinction from the instant case. In the Bradford case the Board considered a shift of membership from the T.W.O.C. to a union found to be company dominated, and found that, except for the unfair labor practices of the employer, the employees would have remained members of the T.W.O.C.

In the I.A.M. case the facts are that the record did not disclose any change of majority status, which immediately differentiates it from the instant case. In the I.A.M. case the petitioner was an organization that had been found to be assisted by the employer in securing a majority of the employees of the tool and die room. The Board found that a contract between the union and the employer covering the tool-room employees was invalid for that reason and for other reasons. The Board also ordered the company to bargain with another organization.

The union in that case made no showing at the hearing that a majority of the production employees had shifted to it after the employer refused to bargain with the U.A.W. Nor did it seek leave from the Court to adduce such additional evidence. But it contended that, upon receiving a notification from it after the hearing had been closed, the Board should have ordered an election or at least made an investigation.

The Court held that no prejudicial error was involved in the failure of the Board to act.

> "Where as a result of unfair labor practices a union can not be said to represent an uncoerced majority the Board has the power to take appropriate steps to the

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[6] 311 U.S. 72, 83.

end that the effect of those practices will be dissipated."[7]

Thus the I.A.M. case is not squarely in point on the instant case. In the instant case, to the contrary, the Board has found that the loss was not due to unfair labor practices.

In the Lorillard case the record did not disclose that the union had lost its majority because of loss of membership due to the fact that employees had voluntarily quit. There, after the hearing had been closed and after the Trial Examiner had rendered his report, a strike occurred. During the strike a union was formed which petitioned the Board for permission to intervene and filed a petition for investigation and certification of representatives.

The Board denied the petition to intervene. In the administration of the Act there are long delays necessarily incident to the procedure. If the Board were to permit the opening of the record on such a petition, it would necessarily involve further delays and hinder the administration of the Act. The Supreme Court held that the Board was not in error. It is respectfully submitted that the case is distinguishable from the case at bar.

The contention of respondent in this regard is also given weight by a recent decision of the Circuit Court of Appeals for the Second Circuit in the case of *N.L.R.B.* v. *Karp Metal Products Co., Inc.*, decided March 25, 1943.[8]

Another case decided by the Circuit Court of Appeals for the Second Circuit substantiates respondent's position.[9] There the respondent asked the Trial Examiner to require the union to produce its dues book showing who had paid dues and who had not. The union's by-laws pro-

[7] 311 U.S. 72.

[8] 134 Fed. (2d) 954.

[9] *N.L.R.B.* v. *National Seal Corp.*, 127 Fed. (2d), 776.

vided that default by a member in payment of dues for three months would automatically cancel membership. The Trial Examiner denied respondent's request. The Court said:

> "The examiner refused the request, and the respondent asked nothing more; it did not suggest that it wished to prove that the union had taken any action to expel the delinquent members, or that the members had declared that the union should no longer represent them. Thus the only question before us is whether the members' default ipso facto ended the union's authority. We think it did not . . . Perhaps these members' failure to pay their dues and their return to work contrary to the Union's order were evidence of a desire not to have the union represent them any longer; but that was not the inevitable conclusion, . . . if the respondent meant to prove that the representation had ended, it was obliged to go further than it suggested to the examiner. As the point was presented to him, it was bad in law and his ruling was right."

The inference is clear that the Court's decision would have been different if the respondent had presented substantial evidence of loss of majority not due to unfair labor practices.

A recent decision of the Circuit Court of Appeals for the Sixth Circuit substantiates fully the contention of respondent, *N.L.R.B.* v. *Ohio Calcium Co.*[19] In the aforesaid case there occurred a strike not caused by unfair labor practices of the employer. The union called off the strike and the employer refused to reinstate forty employees. The Board found that the said strikers were refused reinstatement

[19] 133 Fed. (2d) 721.

because of their union affiliation. In addition to ordering their reinstatement with back pay, the Board found a refusal to bargain by the employer and ordered the employer to bargain with the union upon request. The Court found that the Board's findings with regard to the discrimination against the striking employees were not supported by substantial evidence and found that the termination of the employment of the strikers by the employer was justified. The Court stated:

> "The Board's finding that at all times since February 1938, the United Brick and Clay Workers of America, Local 669, has been the duly designated representative of respondent's employees must be rejected in view of the valid change in the situation by reason of the termination of the employer-employee relationship as above stated. The filling of the positions of the striking employees with new ones removes any basis for a conclusion that after the resumption of work Local 669 was the choice of a majority of respondent's employees for the purpose of collective bargaining. National Labor Relations Board v. Fansteel Corporation, supra (Op. pp. 261, 262)."

Petitioner contends again that in the case at bar the facts bring it clearly within the rule laid down by the Fansteel case. The Board found on the uncontroverted evidence that the loss of majority occurred through no unfair labor practices. In the Fansteel case the loss occurred through a valid discharge of sit-down strikers; in the instant case through voluntary quitting of employment (B.A. 25). The difference in the reasons for termination of employment between the Fansteel case and the instant case should not in any way affect the matter, since neither of the reasons involved an unfair labor practice on the part of the employer.

In its decision in the instant case the Board stated:

> "The Respondent introduced into evidence its payroll of March 5, 1942, by which it appears, as the Respondent asserted, at oral argument, that a sufficient number of union members had left the Respondent's employ by that date to affect the Union's majority. This alleged loss of majority is not determinative of the remedy to be ordered. *We have consistently held that the only means by which a refusal to bargain can be remedied is an affirmative order requiring the Employer to bargain with the Union which represented a majority at the time the unfair labor practice was committed.*" [11]

However, respondent points out that in the Fansteel case the strike of the employees was caused by a refusal to bargain with the union, which represented a majority of the employees at that time, an unfair labor practice; that the Board ordered the company to bargain with the union, which had represented a majority of the employees at the time the unfair labor practice was committed; and that the Supreme Court *refused to enforce* the order because the majority had been lost by reason of the valid discharge of the employees.

Since at the time of the hearing the Union did not represent a majority, it would be an injustice to the employees to establish an exclusive bargaining representative for them. It is important to note that "the sanctions of the Act are imposed not in punishment of the employer but for the protection of the employees." [12]

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[11] Italics mine; Appendix to Petitioner's (Respondent herein) Brief, pp. 25 and 26.

[12] *N.L.R.B.* v. *Virginia Electric & Power Co.*, 115 Fed. (2d) 414; 314 U.S. 469.

The Circuit Court of Appeals for the First Circuit distinguished the instant case from the Fansteel case in the following language:

> "We are of the opinion that the Fansteel case is distinguishable from the case at bar. Because of the violence of the striking employees the employer properly discharged them. *The Union, by the action of its members, forfeited its right to be recognized as the bargaining representative even though at a prior date a majority of the employees had designated it as their representative.* An act had intervened from the date upon which it could be said that the Union was the majority representative which permitted the employer to discharge a number of employees and thereby deprive the Union of its status as the majority representative." [13] (Italics mine.)

It is respectfully submitted that the last sentence of the Court above quoted is inconsistent with its decision in the instant case. In the Fansteel case the Board found that the employees involved had been discharged in violation of the National Labor Relations Act, which finding the Supreme Court held did not rest upon substantial evidence. The Act referred to by the Circuit Court of Appeals involved the right of an employer to discharge employees for cause. It is submitted that, where the loss of majority occurs from the exercise of an employer's right, it can be no stronger or more valid than where the loss of majority occurs by reason of employees' voluntarily quitting their employment. The intervening act in the instant case was the voluntary cessation of employment. There is not an iota of evidence in the record that this cessation of employment was caused by any wrongful actions of the re-

[13] Certified Copy of Appendix to Petitioner's Brief, etc., p. 123.

spondent. There is a specific finding by the Board that a sufficient number of Union members had left the petitioner's employ by the date of the hearing to affect the Union's majority.

If the language used by the Circuit Court of Appeals in distinguishing the Fansteel case, by stating that the union, by the action of its members, may forfeit its right to act as the bargaining representative, be intended by the Court as referring only to the fact of the valid discharge of employees, then petitioner maintains that such action does not in fact constitute a valid distinction. If the aforesaid language be intended by the Court to mean that wrongful acts by the members of a union, whether involving discharge of such members or not, shall cause the union to forfeit its right to represent the employees on matters of collective bargaining, and that such is the distinction between the Fansteel and the instant case, then petitioner respectfully contends that such a conclusion by the Court is not in accord with the National Labor Relations Act or the decision of the Supreme Court. The Act places restrictions only on the activities of employers. An employer is not excused from its obligations to bargain with a union because of the misconduct of a union or its representatives or members.

In the case of *N.L.R.B.* v. *Remington Rand, Inc.*,[14] the Court said:

> "The conduct of a Union, like that of an employer, not only during the negotiations when there are any, but before there are, may be relevant in ascertaining whether the proposal to confer is genuine, or only part of the tactics of the fight. Nothing else can be material; though the Union may have misconducted itself, it has a locus poenitentiae: if it offers in good faith to

[14] 94 Fed. (2d) 862; cert. den. 1938, 304 U.S. 576.

treat, the employer may not refuse because of past sins."

The Circuit Court of Appeals stated in its decision:

> "It appears in the case before us that the loss of a majority was due to a voluntary quitting on the part of certain employees of Respondent. From the Board's treatment of Respondent's argument in this respect, however, it would seem that it is of the view that the loss in majority may be traced to the refusal to bargain with the Union on June 12, 1941." [15]

It is respectfully submitted that it is the function of the Court to determine whether the findings of the Board rest upon substantial evidence and that it is improper and prejudicial to petitioner for the Court to supply findings which have not been made.

It is respectfully submitted that nowhere in the Board's decision is there a finding that the loss of majority was due to any unfair labor practices on the part of petitioner, and it is submitted that the petitioner is entitled to the Board's judgment on this matter supported by substantial evidence and that, where such finding was not made by the Board, it cannot be supplied by the Court. From the very fact that such a finding has been omitted it would appear that the Board did not believe such a finding would have been warranted on the record.

Moreover, it is interesting to note that substantially such a finding was made by the Board in the Fansteel case and decided against by the Supreme Court. In its decision the Board stated:

> "The Respondent cannot be heard to assert that on March 3 and 5 no longer was the Union the represen-

[15] Certified Copy of Appendix, p. 126.

tative of the majority of the employees. The evidence does not show that any of the Union members had resigned by that time, and any defections from the Union's representative authority implied in the return to work of some of the members is clearly ascribed to the unlawful conduct of the Respondent in continuing to rebuff all efforts of the Union to meet and settle the strike. Any such defections may accordingly be disregarded." [16]

The Circuit Court of Appeals in its opinion in the case at bar stated that respondent's dilatory tactics, its refusal to recognize the Union and other actions deprived the Union of the opportunity of strengthening its organization. It is submitted that the Board made no such finding and the Court cannot supply it for the Board. It is called to the attention of the Court that the same reasoning could have been applied with more merit to the Fansteel case, for there the strike which resulted in the discharge of the employees was caused by the unfair labor practices of the employer. In fact, the entire language of the Circuit Court of Appeals in the instant case with respect to findings which it said the Board might reasonably have made, and which petitioner contends were not made, could be applied with equal merit to the Fansteel case.

The Circuit Court of Appeals in the case at bar places great reliance on the Lorillard case.[17]

In its opinion in the instant case, in discussing the Karp case [18] the Court stated:

"But it appears from the Lorillard case that the only consideration which the Board gave to the pos-

[16] 5 N.L.R.B. 930, 945, 946.

[17] *N.L.R.B.* v. *P. Lorillard Co.*, 314 U.S. 512; 62 S. Ct. 397.

[18] *N.L.R.B.* v. *Karp Metal Products Co. Inc.*, 134 Fed. (2d) 954 (C.C.A. 2d, 1943).

sible shift in the majority was to say that it would ignore such a shift in order to effectuate the policies of the Act." [19]

It is respectfully contended that the Board did much more than that. The Board found in the Lorillard case as follows:

> "The necessary delays incident to the adjudication of a dispute have postponed the Board's Order until a time considerably subsequent to the original wrongful refusal to bargain. The refusal to bargain collectively disrupts the morale of the men, has a deterring effect upon the organizational activity of the Union and a discouraging influence on members already gained which tends to induce them to drop from the ranks." [20]

The Supreme Court recognized the fact that such finding had been made in its opinion in the Lorillard case as quoted in the opinion of the Circuit Court of Appeals in the instant case: "The Board had considered the effect of a possible shift in membership . . ." [21]

Such findings are not present in the instant case. In addition it must be remembered that in the Lorillard case the loss of majority was never shown on the record and that the alleged loss was brought to the attention of the Board after the hearing had closed and after the Trial Examiner had rendered his intermediate report, which in itself differentiates it substantially from the instant case. It is submitted that in the instant case, when the Court discusses the possible accessions in membership from new or

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[19] Certified Copy of Appendix, p. 125.
[20] 16 N.L.R.B. 684, 700.
[21] Same as note 19, *supra*.

old employees, the Court is merely speculating on conclusions that the Board might have drawn, but did not, for reasons known only to it.

By its Attorney,
ARTHUR V. GETCHELL.

BENJAMIN E. GORDON,
Of Counsel.

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Supreme Court of the United States.

OCTOBER TERM, 1943.

No. 521.

FRANKS BROS. COMPANY, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR PETITIONER.

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BRIEF FOR PETITIONER.

Opinions Below.

The order of the Circuit Court of Appeals denying petitioner's petition for rehearing appears at page 123 of the Record. The opinion of the Circuit Court of Appeals filed on July 27, 1943, decreeing enforcement of the order of the respondent (R. 112-122), is reported in 137 F. (2d) 989. The findings of fact, conclusions of law and order of the respondent (R. 3-28) are reported in 44 N.L.R.B. 898.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, 49 Stat. 449, and Sections 239 and 240 of the Judicial Code as amended, U.S.C. Title 28, Sections 346 and 347.

Question Presented.

The sole question presented is whether an employer shall be required to bargain collectively with a union, as the exclusive representative of the employees in an appropriate bargaining unit, which does not, at the time of issuance of the order of the Board, represent a majority of such employees and where the loss of majority has not occurred by reason of any unfair labor practices on the part of the employer.

Statement of the Case.

On June 19, 1941, a petition for investigation and certification of representatives of employees of petitioner was filed with the First Regional Office of the respondent at Boston, Massachusetts, Case No. I-R-725, by the Amalgamated Clothing Wo.kers of America, hereafter called the Union (R. 9). On July 24, 1941, the Union withdrew the said petition and filed charges of unfair labor practices against the petitioner in Case No. I-C-1797, known as Case No. C-2179 before the Board, which were later amended. The said charges, as amended, alleged violation by petitioner of Section 8 (1), (3) and (5) of the Act.

On March 2, 1942, the respondent issued its complaint in this proceeding. The complaint alleged that petitioner had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3) and (5) and Section 2 (6)

and (7) of the Act. Thereafter, on March 13, 1942, petitioner filed its answer denying the unfair labor practices charged and challenging the jurisdiction of the Board.

A hearing was held at Lawrence, Massachusetts, from March 16 to March 24, 1942. On April 29, 1942, the Trial Examiner filed his intermediate report, finding violations of Section 8 (1) and (5) of the Act, but finding no violation of Section 8 (3), and recommending that petitioner cease and desist from such violations and take certain affirmative actions.

On May 28, 1942, the respondent granted petitioner's request to be heard in oral argument before the Board and scheduled the hearing for the purpose of oral argument on June 16, 1942. Thereafter petitioner filed exceptions to the intermediate report. Oral argument was postponed from June 16, 1942, and finally had before the respondent on June 30, 1942, and the respondent issued its decision and order on October 8, 1942.

Thereafter the respondent petitioned the Circuit Court of Appeals for the First Circuit for enforcement of its order. The cause was heard on June 2, 1943, and on July 27, 1943, a decree of the Court was entered enforcing the order of the respondent with the exception of paragraph 2 (c) and further ordering the petitioner to notify the Regional Director for the First Region of respondent in writing within ten days what steps it had taken to comply with said order. On August 6, 1943, the Court ordered a stay of its decree to permit petitioner to file a petition for rehearing.

On August 23, 1943, a petition for rehearing was filed by petitioner, which was denied by the order of the Court filed on September 13, 1943. Thereafter, on September 15, 1943, the stay of decree of August 6, 1943, was further continued. On January 10, 1944, petitioner's petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit was granted.

Petitioner's Position.

Petitioner's position is that where, according to the record in the proceeding, a union does not represent a majority of all the employees in an appropriate bargaining unit at the time of the issuance of an order of the Board and where the loss of majority was not caused by unfair labor practices on the part of the employer, the employer should not be required upon request to bargain collectively with such union as the exclusive representative of all the employees in such unit.

Argument.

The petitioner should not be ordered to bargain collectively with the Union as the exclusive representative of all the production and maintenance employees at petitioner's Lawrence, Massachusetts, plant, excluding executives, supervisors and clerical employees, because of the fact that at the time of the hearing before respondent the Union no longer represented a majority of such employees and such loss was not due to any unfair labor practices of petitioner.

A. Representation in the Unit as of March 5, 1942, the Date of Hearing before Respondent.

The respondent found that a sufficient number of the Union's members had ceased working for the petitioner to deprive the Union, as of March 5, 1942, of its majority status (R. 25). The only case which has been decided by the United States Supreme Court which rules squarely on this issue is *N.L.R.B.* v. *Fansteel Metallurgical Corp.*[1]

[1] 306 U.S. 240; 59 S. Ct. 490.

In the Fansteel case the Board had found that the Union had a majority on February 17, 1937, and found a refusal to bargain on the part of the employer in violation of Section 8 (5) of the Act. Thereafter, because of the unfair labor practices of the employer, the employees went on strike. The loss in majority occurred thereafter by the valid discharge of sit-down strikers.

In the Fansteel Metallurgical Corporation case [2] the Supreme Court stated:

> "In view of the change in the situation by reason of the valid discharge of the 'sit-down strikers' and the filling of positions with new men, we see no basis for a conclusion that after the resumption of work Lodge 66 was the choice of a majority of Respondent's employees for the purpose of collective bargaining. The Board's order properly requires Respondent to desist from interfering in any manner with its employees in the exercise of their right to self-organization and to bargain collectively through representatives of their own choosing. But it is a different matter to require Respondent to treat Lodge 66 in the altered circumstances as such a representative. If it is contended that Lodge 66 is the choice of the employees, the Board has abundant authority to settle the question by requiring an election."

Therefore, in the instant case, even if the Circuit Court of Appeals was right in sustaining respondent's finding of a refusal to bargain as of June 12, 1941, as it did, it is the contention of the petitioner that an order to recognize and to bargain collectively with the Union as the exclusive representative of the employees is not justified by the evidence and the law.

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[2] 306 U.S. 240, 261, 262; 59 S. Ct. 490, 498, 499.

In its findings in regard to this point the respondent referred to the Lorillard case and others decided by the Supreme Court (R. 26).[3] In the Lorillard case the Court in a *per curiam* decision cited the following cases as authority: *N.L.R.B.* v. *Bradford Dyeing Association*[4] and *I.A.M.* v. *N.L.R.B.*,[5] each of which was referred to by respondent.

It is important to note that in each of said cases cited by the Supreme Court in the Lorillard case there is a distinction from the instant case. In the Bradford case the Board considered a shift of membership from the T.W.O.C. to a union found to be company dominated, and found that, except for the unfair labor practices of the employer, the employees would have remained members of the T.W.O.C.[6]

In the I.A.M. case the facts are that the record did not disclose any change of majority status, which immediately differentiates it from the instant case. In the I.A.M. case the petitioner was an organization that had been found to have been assisted by the employer in securing a majority of the employees of the tool and die room. The Board found that a contract between the union and the employer

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[3] *N.L.R.B.* v. *P. Lorillard Co.*, 314 U.S. 512; 62 S. Ct. 397.

[4] 310 U.S. 318, 339-340.

[5] 311 U.S. 72, 83.

[6] Briefly the pertinent facts in the Bradford case are as follows: At various times prior to April 9, 1937, the company stated that it would never bargain with the C.I.O. On April 4, 1937, the C.I.O. had a majority. On April 6, 1937, a union found by the Board to be company dominated and instigated was formed. Between April 4th and April 9th a majority of the employees shifted from the C.I.O. to the company-dominated union. On April 9th the company refused to bargain with the C.I.O. The Board found "the record is clear that had it not been for the unfair labor practices of respondent in organizing and fostering the Federation and in persuading, intimidating and coercing employees to join the Federation and withdraw from the Textile Worker's Organizing Committee, respondent's employees would have remained members of the Textile Workers Organizing Committee."

covering the tool-room employees was invalid for that reason and for other reasons. The Board also ordered the company to bargain with another organization as the representative of the production employees.

The union in that case made no showing at the hearing that a majority of the production employees had shifted to it after the employer refused to bargain with the U.A.W. Nor did it seek leave from the Court to adduce such additional evidence. But the Union contended that, upon receiving a notification from it after the hearing had been closed, the Board should have ordered an election or at least made an investigation.

The Court held that no prejudicial error was involved in the failure of the Board to act.

> "Where as a result of unfair labor practices a union can not be said to represent an uncoerced majority the Board has the power to take appropriate steps to the end that the effect of those practices will be dissipated."[7]

Thus the I.A.M. case is not squarely in point on the instant case. In the instant case, to the contrary, the Board has found that the loss was not due to unfair labor practices.

In the Lorillard case the record did not disclose that the union had lost its majority because of loss of membership due to the fact that employees had voluntarily quit. There, after the hearing had been closed and after the Trial Examiner had rendered his report, a strike occurred. During the strike a union was formed which petitioned the Board for permission to intervene and filed a petition for investigation and certification of representatives.

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[7] 311 U.S. 72, 82; 61 S. Ct. 83, 89.

The Board denied the petition to intervene. In the administration of the Act there are long delays neeessarily incident to the procedure. If the Board were to permit the opening of the record on such a petition, it would necessarily involve further delays and hinder the administration of the Act. The Supreme Court held that the Board was not in error. It is respectfully submitted that the case is distinguishable from the case at bar.

The contention of respondent in this regard is also given weight by a recent decision of the Circuit Court of Appeals for the Second Circuit in the case of *N.L.R.B.* v. *Karp Metal Products Co., Inc.*, decided March 25, 1943.[8]

Another case decided by the Circuit Court of Appeals for the Second Circuit substantiates respondent's position.[9] There the respondent asked the Trial Examiner to require the union to prod: e its dues book showing who had paid dues and who had not. The union's by-laws provided that default by a member in payment of dues for three months would automatically cancel membership. The Trial Examiner denied respondent's request. The Court said:

> "The examiner refused the request, and the respondent asked nothing more; it did not suggest that it wished to prove that the union had taken any action to expel the delinquent members, or that the members had declared that the union should no longer represent them. Thus the only question before us is whether the members' default ipso facto ended the union's authority. We think it did not. . . . Perhaps these members' failure to pay their dues and their return to work contrary to the Union's order were evidence of a desire not to have the union represent them

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[8] 134 Fed. (2d) 954.

[9] *N.L.R.B.* v. *National Seal Corp.*, 127 F. (2d) 776, 779.

> any longer; but that was not the inevitable conclusion, . . . if the respondent meant to prove that the representation had ended, it was obliged to go further than it suggested to the examiner. As the point was presented to him, it was bad in law and his ruling was right."

The inference is clear that the Court's decision would have been different if the respondent had presented substantial evidence of loss of majority not due to unfair labor practices.

Petitioner contends again that in the case at bar the facts bring it clearly within the rule laid down by the Fansteel case. The Board found on the uncontroverted evidence that the loss of majority occurred through no unfair labor practices. In the Fansteel case the loss occurred through a valid discharge of sit-down strikers; in the instant case through voluntary quitting of employment (R. 25). The difference in the reasons for termination of employment between the Fansteel case and the instant case should not in any way affect the matter, since neither of the reasons involved an unfair labor practice on the part of the employer.

In its decision in the instant case the Board stated:

> "The Respondent introduced into evidence its payroll of March 5, 1942, by which it appears, as the Respondent asserted, at oral argument, that a sufficient number of union members had left the Respondent's employ by that date to affect the Union's majority. This alleged loss of majority is not determinative of the remedy to be ordered. *We have consistently held that the only means by which a refusal to bargain can be remedied is an affirmative order requiring the Employer to bargain with the Union which represented a*

majority at the time the unfair labor practice was committed" [10] (R. 25).

However, respondent points out that in the Fansteel case the strike of the employees was caused by a refusal to bargain with the union, which represented a majority of the employees at that time, an unfair labor practice; that the Board ordered the company to bargain with the union which had represented a majority of the employees at the time the unfair labor practice was committed; and that the Supreme Court *refused to enforce* the order because the majority had been lost by reason of the valid discharge of the employees.

Since at the time of the hearing the Union did not represent a majority, it would be an injustice to the employees to establish an exclusive bargaining representative for them. It is important to note that "the sanctions of the Act are imposed not in punishment of the employer but for the protection of the employees." [11]

The Circuit Court of Appeals for the First Circuit distinguished the instant case from the Fansteel case in the following language:

> "We are of the opinion that the Fansteel case is distinguishable from the case at bar. Because of the violence of the striking employees the employer properly discharged them. *The Union, by the action of its members, forfeited its right to be recognized as the bargaining representative even though at a prior date a majority of the employees had designated it as their representative.* An act had intervened from the date upon which it could be said that the Union was the

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[10] Italics mine.

[11] *N.L.R.B.* v. *Virginia Electric & Power Co.*, 314 U.S. 469, 477; 62 S. Ct. 348.

majority representative which permitted the employer to discharge a number of employees and thereby deprive the Union of its status as the majority representative" (R. 119).

It is respectfully submitted that the basis stated by the Court as above quoted is inconsistent with its decision in the instant case. In the Fansteel case the Board found that the employees involved had been discharged in violation of the National Labor Relations Act, which finding the Supreme Court held did not rest upon substantial evidence. The Act referred to by the Circuit Court of Appeals involved the right of an employer to discharge employees for cause. It is submitted that, where the loss of majority occurs from the exercise of an employer's right, it can be no stronger or more valid than where the loss of majority occurs by reason of employees' voluntarily quitting their employment. The intervening act in the instant case was the voluntary cessation of employment. There is not an iota of evidence in the record that this cessation of employment was caused by any wrongful actions of the respondent. There is a specific finding by the Board that a sufficient number of Union members had left the petitioner's employ by the date of the hearing to affect the Union's majority.

If the language used by the Circuit Court of Appeals in distinguishing the Fansteel case, by stating that the union, by the action of its members, may forfeit its right to act as the bargaining representative, be intended by the Court as referring only to the fact of the valid discharge of employees, then petitioner maintains that such action does not in fact constitute a valid distinction. If the aforesaid language be intended by the Court to mean that wrongful acts by the members of a union, whether involving dis-

charge of such members or not, shall cause the union to forfeit its right to represent the employees on matters of collective bargaining, and that such is the distinction between the Fansteel and the instant case, then petitioner respectfully contends that such a conclusion by the Court is not in accord with the National Labor Relations Act or the decision of the Supreme Court. The Act places restrictions only on the activities of employers. An employer is not excused from its obligations to bargain with a union because of the misconduct of a union or its representatives or members.

The Circuit Court of Appeals stated in its decision:

> "It appears in the case before us that the loss of a majority was due to a voluntary quitting on the part of certain employees of Respondent. From the Board's treatment of Respondent's argument in this respect, however, it would seem that it is of the view that the loss in majority may be traced to the refusal to bargain with the Union on June 12, 1941" (R. 121).

It is respectfully submitted that it is the function of the Court to determine whether the findings of the Board rest upon substantial evidence and that it is improper and prejudicial to petitioner for the Court to supply findings which have not been made.

It is respectfully submitted that nowhere in the Board's decision is there a finding that the loss of majority was due to any unfair labor practices on the part of petitioner, and it is submitted that the petitioner is entitled to the Board's judgment on this matter supported by substantial evidence and that, where such finding was not made by the Board, it cannot be supplied by the Court. From the very fact that such a finding has been omitted it would appear

that the Board did not believe such a finding would have been warranted on the record.

Moreover, it is interesting to note that substantially such a finding was made by the Board in the Fansteel case and decided against by the Supreme Court. In its decision the Board stated:

> "The Respondent cannot be heard to assert that on March 3 and 5 no longer was the Union the representative of the majority of the employees. The evidence does not show that any of the Union members had resigned by that time, and any defections from the Union's representative authority implied in the return to work of some of the members is clearly ascribed to the unlawful conduct of the Respondent in continuing to rebuff all efforts of the Union to meet and settle the strike. Any such defections may accordingly be disregarded." [12]

The Circuit Court of Appeals in its opinion in the case at bar stated that respondent's dilatory tactics, its refusal to recognize the Union and other actions deprived the Union of the opportunity of strengthening its organization. It is submitted that the Board made no such finding and the Court cannot supply it for the Board. It is called to the attention of the Court that the same reasoning could have been applied with more merit to the Fansteel case, for there the strike which resulted in the discharge of the employees was caused by the unfair labor practices of the employer. In fact, the entire language of the Circuit Court of Appeals in the instant case with respect to findings which it said the Board might reasonably have made, and which petitioner contends were not made, could be

[12] 5 N.L.R.B. 930, 945, 946.

applied with at least equal if not greater merit to the Fansteel case.

The Circuit Court of Appeals in the case at bar places great reliance on the Lorillard case.[13]

In its opinion in the instant case, in discussing the Karp case [14] the Court stated:

> "But it appears from the Lorillard case that the only consideration which the Board gave to the possible shift in the majority was to say that it would ignore such a shift in order to effectuate the policies of the Act" (R. 121).

It is respectfully contended that the Board did much more than that. The Board found in the Lorillard case as follows:

> "The necessary delays incident to the adjudication of a dispute have postponed the Board's Order until a time considerably subsequent to the original wrongful refusal to bargain. The refusal to bargain collectively disrupts the morale of the men, has a deterring effect upon the organizational activity of the Union and a discouraging influence on members already gained which tends to induce them to drop from the ranks." [15]

The Supreme Court recognized the fact that such finding had been made in its opinion in the Lorillard case as quoted in the opinion of the Circuit Court of Appeals in the instant case: "The Board had considered the effect of a possible shift in membership . . ." (R. 120).

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[13] *N.L.R.B.* v. *P. Lorillard Co.*, 314 U.S. 512; 62 S. Ct. 397.

[14] *N.L.R.B.* v. *Karp Metal Products Co., Inc.*, 134 F. (2d) 954 (C.C.A. 2d, 1943).

[15] 16 N.L.R.B. 684, 700.

Such findings are not present in the instant case. In addition it must be remembered that in the Lorillard case the loss of majority was never shown on the record and that the alleged loss was brought to the attention of the Board after the hearing had closed and after the Trial Examiner had rendered his intermediate report, which in itself differentiates it substantially from the instant case. It is submitted that in the instant case, when the Court discusses the possible accessions in membership from new or old employees, the Court is merely speculating on conclusions that the Board might have drawn, but did not, for reasons known only to it.

On January 10, 1944, two decisions were rendered by the Circuit Court of Appeals for the Fourth Circuit *re* cases involving loss of majority. Both of these cases are clearly distinguishable from the instant case.[16]

In the Great Southern case the cause arose on a petition by the N.L.R.B. for an order holding the company in contempt of a decree of the Court entered on April 13, 1942, enforcing the Board's order to bargain upon request with the union. After entry of the decree of the Court a petition was signed by a majority of the employees stating that they did not desire to be represented by the union. The company asked the Board to redetermine the union's majority status. The Board denied its request, apparently on the ground that the company had not yet bargained with the union. The crux of the Court's decision appears to be shown by its statement:

> "If the employees do now affirmatively oppose the company's bargaining with the union for a contract affecting them, it is only because the company, in vio-

[16] *N.L.R.B.* v. *Great Southern Trucking Co. and L. A. Rawlinson*, No. 4874, C.C.A. 4; *N.L.R.B.* v. *Appalachian Electric Power Co.*, No. 5134, C.C.A. 4.

lation of our decree, has continued its policy of unlawful antagonism to the union."

Whether or not the Circuit Court of Appeals for the Fourth Circuit is correct in its decision is immaterial in so far as the instant case is concerned.[17] In the Great Southern case the alleged loss of majority takes place not only after the hearing has been closed and the Board's order rendered but even after the Board's order has been affirmed by the Court. In addition the aforesaid case appears to involve a shift in membership. In the instant case there is no shift in membership but a loss in membership occurring prior to the time of the Board's hearing and due solely, as found by the Board, to the voluntary quitting of employment by union members.

In the Appalachian Electric Power case the Board certified a union as the exclusive bargaining representative of the employees after an election. Subsequently a petition was circulated by a majority of the employees saying that they no longer wished to be represented by the union. Thereupon the company refused to bargain with the union. The Court enforced the Board's order requiring the company to bargain with the union. Again this case is distinguishable from the instant case. A shift is involved such as occurred in the Bradford and Great Southern cases. Another basis for distinction may well be that in the Appalachian case there is no real assurance that the majority status has been lost, but merely an allegation, whereas in the instant case the Board itself found that the majority had been lost.

In its brief in opposition to the petition for writ of certiorari the Board cited three Circuit Court of Appeals decisions as squarely supporting the First Circuit's deci-

[17] Cf. *N.L.R.B.* v. *Pennsylvania Greyhound Lines Inc.*, 303 U.S. 261 (1938).

sion in the instant case.[18] All of these cases are clearly distinguishable.

In the Hobbs case there was no evidence in the record of loss of the union's majority. The question was first raised in the company's answer to the Board's petition for enforcement of its order.[19] In the Burke Machine case the loss of majority at the time of hearing, if any, was involved in a shift to a company-instigated organization. After the hearing the company petitioned for leave to adduce additional evidence to show that the union no longer represented a majority, which the Board refused to permit and was upheld by the Court.

In the Porcelain Steels case the loss of majority was shown at the hearing but was found upon substantial evidence to have been caused by a shift to a company-instigated organization.

Conclusion.

The decision of the Court below is incorrect and should be reversed.

By its Attorneys,

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[18] *N.L.R.B.* v. *Clinton E. Hobbs Co.*, 132 F. (2d) 249 (C.C.A. 1); *N.L.R.B.* v. *Burke Machine Tool Co.*, 133 F. (2d) 618 (C.C.A. 6); *N.L.R.B.* v. *Porcelain Steels, Inc.* (not yet reported, decided Nov. 30, 1943) (C.C.A. 6).

[19] Cf. *N.L.R.B.* v. *Pennsylvania Greyhound Lines Inc.*, *supra*.

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 521

FRANKS BROS. COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 112–122) is reported in 137 F. (2d) 989. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 3–28) are reported in 44 N. L. R. B. 898.

JURISDICTION

The decree of the court below (R. 122) was entered on July 27, 1943. A petition for rehearing filed by petitioner was denied on September

13, 1943 (R. 123). The petition for a writ of certiorari was filed on December 4, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

The sole question presented is whether the Board, having found that petitioner had interfered with the self-organization of its employees and refused to bargain collectively with a labor organization designated by a majority of the employees in an appropriate unit, may properly order petitioner to bargain with that labor organization, although prior to issuance of the Board's order a sufficient number of the employees who designated the labor organization had left petitioner's employ so that the labor organization was no longer designated by a majority of the employees in the unit.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 12–13.

STATEMENT

Upon the usual proceedings the Board issued its findings of fact, conclusions of law, and order (R. 3–28). The pertinent facts, as found by the

Board and shown by the evidence, may be summarized as follows:[1]

On June 12, 1941, 3 days after a majority of petitioner's employees in an appropriate bargaining unit had designated the Union[2] as their bargaining agent (R. 13–18; 58–59, 68–70, 95–96, 105–106), petitioner informed the Union's representative that it was unwilling to bargain with the Union at that time, and advised him not to seek negotiations with petitioner again for the next 6 months (R. 6–7; 40–41, 43–48, 50–52). During the succeeding week petitioner again stated its refusal to negotiate with the Union's representative (R. 8; 41, 52–53, 90–91). Thereafter the Union filed with the Board a petition for an investigation and certification of representatives, and subsequently entered into an agreement with petitioner for a consent election to be conducted by the Board on July 25, 1941 (R. 9; 66, Bd. Exh. 6). During the week preceding the scheduled election petitioner engaged in a campaign of hostile activities directed against the Union, threatening that if the Union won the election petitioner would close its plant, as a result of which the Union refused to proceed with the election (R. 9–10; 59–60, 73–74, 81–82, 84–89, 98–99, 104, 107, 108). Thereafter peti-

[1] References preceding the semicolons are to the Board's findings; succeeding references are to the supporting evidence.

[2] Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations.

tioner continued its anti-union activities (R. 10–12; 55–57, 75–80, 82–84, 95). At the hearing before the Trial Examiner petitioner introduced evidence to show that, as of March 5, 1942, a sufficient number of union members had left petitioner's employ so that less than a majority of the employees in the unit were at that time union members (R. 25–26, footnote 24; Resp. Exh. 22, 22–a).

Upon these facts the Board concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act (R. 27). It considered the effect to be given to petitioner's showing that the Union had lost its majority status and determined that nevertheless petitioner should be required to bargain with the Union (R. 25–26, footnote 24). Accordingly the Board entered its order requiring petitioner to cease and desist from its violations of the Act, to bargain collectively with the Union, and to post appropriate notices (R. 27–28).

Thereafter the Board filed its petition for enforcement in the court below and on July 27, 1943, the court handed down its opinion and entered its decree enforcing the Board's order (R. 112–122).

ARGUMENT

Petitioner's contention that the Board may not require it to bargain with the Union, for the reason that the Union allegedly lost its majority status subsequent to petitioner's original refusal to

bargain with it, and prior to issuance of the Board's order, is without merit. That issue has been settled by this Court. *National Labor Relations Board* v. *P. Lorillard Co.*, 314 U. S. 512; *International Ass'n of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 339–340. The court below, following these controlling decisions, properly sustained the Board's order. Its holding presents no conflict of decisions. Indeed the decisions of the Circuit Courts of Appeals adhere to this settled doctrine with marked conformity.[3]

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[3] *National Labor Relations Board* v. *Clinton E. Hobbs Co.*, 132 F. (2d) 249, 252 (C. C. A. 1); *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 F. (2d) 681, 690–691 (C. C. A. 1); *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 118 F. (2d) 874, 880 (C. C. A. 1), certiorari denied, 313 U. S. 595; *National Labor Relations Board* v. *The Federbush Co.*, 121 F. (2d) 954, 956 (C. C. A. 2); *National Labor Relations Board* v. *Karp Metal Products Co.*, 134 F. (2d) 954 (C. C. A. 2), bargaining order (42 N. L. R. B. 119, 153–155; 51 N. L. R. B., No. 105) enforced without opinion, October 23, 1943; *National Labor Relations Board* v. *Medo Photo Supply Corp.*, 135 F. (2d) 279, 281 (C. C. A. 2), certiorari granted, No. 265, this Term; *National Labor Relations Board* v. *George P. Pilling & Son*, 119 F. (2d) 32, 39 (C. C. A. 3); *Oughton* v. *National Labor Relations Board*, 118 F. (2d) 486, 498 (C. C. A. 3), certiorari denied, 315 U. S. 797; *National Labor Relations Board* v. *Poultrymen's Service Corp.*, 138 F. (2d) 204, 211 (C. C. A. 3); *National Labor Relations Board* v. *Moltrup Steel Products Co.*, 121 F. (2d) 612, 618 (C. C. A. 3); *National Labor Relations Board* v. *New Era Die Co.*, 118 F. (2d) 500, 505 (C. C. A. 3); *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, 640 (C. C. A. 4); *National Labor Relations Board*

In the *Lorillard* case, this Court held that it was the province of the Board, not the courts, to determine whether a shift in the membership of a labor organization subsequent to a refusal to bargain, made an order to bargain collectively with that labor organization inappropriate as a remedy for the effects of the prior unlawful conduct (314 U. S. 512, 513). Contrary to petitioner's contention (Pet. 8–10, 17–19), the Board's findings in the instant case respecting the need for the usual order requiring petitioner to bargain collectively

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v. *Dixie Motor Coach Corp.*, 128 F. (2d) 201, 202 (C. C. A. 5); *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, 478 (C. C. A. 5); *National Labor Relations Board* v. *Porcelain Steels, Inc.*, not yet reported, decided November 30, 1943 (C. C. A. 6); *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. (2d) 618, 621 (C. C. A. 6); *National Labor Relations Board* v. *Swift & Co.*, 127 F. (2d) 30, 32 (C. C. A. 6); *National Labor Relations Board* v. *Chicago Apparatus Co.*, 116 F. (2d) 753, 758 (C. C. A. 7); *M. H. Ritzwoller Co.* v. *National Labor Relations Board*, 114 F. (2d) 432, 437–438 (C. C. A. 7); *Valley Mould & Iron Corp.* v. *National Labor Relations Board*, 116 F. (2d) 760, 765 (C. C. A. 7), certiorari denied, 313 U. S. 590; *National Labor Relations Board* v. *The Blanton Co.*, 121 F. (2d) 564, 569 (C. C. A. 8); *Bussmann Mfg. Co.* v. *National Labor Relations Board*, 111 F. (2d) 783, 788 (C. C. A. 8); *National Labor Relations Board* v. *Crown Can Co.*, 138 F. (2d) 263, 267 (C. C. A. 8); *National Labor Relations Board* v. *Wm. Tehel Bottling Co.*, 129 F. (2d) 250, 254 (C. C. A. 8); *Continental Oil Co.* v. *National Labor Relations Board*, 113 F. (2d) 473, 480–481 (C. C. A. 10), certiorari denied in this respect, 311 U. S. 637; *Colorado Fuel & Iron Corp.* v. *National Labor Relations Board*, 121 F. (2d) 165, 175–176 (C. C. A. 10).

were in all material respects the same as those present in the *Lorillard* case (compare R. 25–26 with 16 N. L. R. B. 684, 699–700). As the court below pointed out (R. 118, 121), the Board in effect found that the alleged "loss of majority may be traced to the refusal to bargain * * *," its finding in this respect being implicit in its "treatment of [petitioner's] argument" (R. 121). The court held that the evidence fully sustained this determination of the Board (R. 25–26), for petitioner's

> dilatory tactics, its refusal to recognize the union as a bargaining representative, and its campaign against the union deprived it of the opportunity of strengthening its organization. It demonstrated the union's inability to reach an agreement with the employer with the result that as time went on the enthusiasm of its members waned and made it more difficult for the union to capture the allegiance of other employees, either old employees who had previously not joined or new employees who came on after the unfair labor practices were committed. The Board might reasonably conclude that had the union been recognized and installed as bargaining representative of the employees, as the law required, it probably would have retained its majority status by accessions from these sources, despite its loss of members resulting from normal labor turn-over. (R. 121.)

Thus the court gave effect to the common-sense view that, since employees join labor organizations to obtain collective bargaining, the factor normally decisive of a union's ability to secure and retain members is whether or not the employer bargains with the union. *International Ass'n of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271. And it is an equally well-settled corollary of this view that it is within the Board's discretion to determine that a union's loss of majority, which, as here, is traceable to the employer's unfair labor practices, should not be used by the employer as a shield against a bargaining order. To hold otherwise would prevent the Board from remedying the unfair labor practices of an employer whose violations of the Act were sufficiently flagrant to destroy the union's majority membership.

Petitioner's contention (Pet. 7–8, 12–17) that the decision below fails to follow *National Labor Relations Board* v. *Fansteel Metallurgical Corp.* (306 U. S. 240, 261–262), is without merit. The intervening unlawful acts of the union members in the *Fansteel* case, which furnished a lawful ground for the employer's discharge of the bulk of the union membership, distinguish that case. In the instant case there was no intervening circumstance which would warrant the assumption that

the Union would have lost its majority regardless of the occurrence of the unfair labor practices. On the contrary, as both the Board and the court below recognized, there was a clear causal connection between the unfair labor practices here and the succeeding alleged loss of the Union's majority (*supra*, p. 7). The fact that the alleged loss of the Union's majority may have been caused by the withdrawal of union members from petitioner's employ rather than by the withdrawal of employees from membership in the Union is a technical difference without legal significance. One case, as the court below properly held, is as clearly within the rule of the *Lorillard* decision as is the other. Three recent circuit court decisions squarely support the court below in this respect. *National Labor Relations Board* v. *Clinton E. Hobbs Co.*, 132 F. (2d) 249, 252 (C. C. A. 1); *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. (2d) 618, 621 (C. C. A. 6); *National Labor Relations Board* v. *Porcelain Steels, Inc.*, not yet reported, decided November 30, 1943 (C. C. A. 6). The courts in each of these cases, relying upon the authority of this Court's decisions in the *Lorillard*, *Machinists*, and *Bradford Dyeing* cases (*supra*), enforced the Board's bargaining order despite the employer's contention that subsequent to the refusal to bargain the union had lost its majority due to a normal turn-over in employee personnel. In the *Burke Machine Tool* decision the court de-

clared that "the Board was entitled to conclude * * * that such loss could not be separated from the unfair labor practices" (133 F. (2d) at p. 621). And in the *Porcelain Steels* decision the court specifically approved the Board's inference that "except for the unfair labor practices * * * the Union 'would have been able to recruit from among the new employees a sufficient number to maintain its majority.'" These observations apply with equal propriety to the instant case.

And in the case of *National Labor Relations Board* v. *Karp Metal Products Co., Inc.*, 134 F. (2d) 954 (C. C. A. 2) upon which petitioner relies (Pet. 10), the court subsequently enforced an order to bargain collectively despite a turn-over in the employer's personnel which probably removed the union's majority (42 N. L. R. B. 119, 153–155; 52 N. L. R. B., No. 105, enforced without opinion, October 23, 1943).

Petitioner's reliance upon *National Labor Relations Board* v. *Ohio Calcium Co.*, 133 F. (2d) 721 (C. C. A. 6) (Pet. 11–12) is misplaced. That case is not in point since there the loss of majority, unlike the alleged loss in the instant case, *preceded* the refusal to bargain and obviously could not have been caused by it.

CONCLUSION

The decision below is correct and presents no conflict of decisions or question of general im-

portance warranting review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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DECEMBER 1943.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

* * * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 521

FRANKS BROS. COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 138–148) is reported in 137 F. (2d) 989. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 3–28) are reported in 44 N. L. R. B. 898.

JURISDICTION

The decree of the circuit court of appeals (R. 148) was entered on July 27, 1943. A petition for rehearing filed by petitioner was denied on September 13, 1943 (R. 149). The petition for a writ of certiorari was filed on December 4, 1943, and was granted on January 10, 1944 (R. 152). The

jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

The sole question presented is whether the Board, having found that petitioner had interfered with the self-organization of its employees and had refused to bargain collectively with a labor organization designated by a majority of the employees in an appropriate unit (45 out of 80), may properly order petitioner to bargain with that labor organization, although prior to the issuance of the Board's order, as a result of a turnover in normal business course among a minority of the employees in the unit, the number of employees who designated the labor organization remaining in petitioner's employment constituted less than a majority of the employees in the unit (32 out of 85).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in Appendix A, *infra*, pp. 46–47.

STATEMENT

Petitioner, a Massachusetts corporation, is engaged at Lawrence, Massachusetts, in the manufacture, sale, and distribution of men's clothing

(R. 100). In January 1941, the Union[1] began to seek members among its employees (R. 68), and by June 9, 1941, had been designated as collective bargaining representative by 45 of petitioner's 80 production and maintenance employees (excluding executives, supervisors, and clerks) (R. 58–59, Resp. Exh. 1, R. 129; R. 66, Bd. Exh. 10, R. 125; R. 68–70, Bd. Exhs. 12–3 to 12–27, 12–29 to 12–45, R. 102, 103, 125–129, 110–112; R. 95–96, Bd. Exh. 22, R. 105–106), an appropriate bargaining unit (R. 13–16).[2] The Union thereupon sought to initiate collective bargaining with petitioner, but at a meeting on June 12 and again during the following week, the latter refused to bargain and advised the Union's rep-

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[1] Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations.

[2] The number in the unit was determined by deducting from the total number of 94 names listed on an exhibit prepared by petitioner's bookkeeper and showing the persons on each of petitioner's weekly pay rolls during the period from May 29 to July 31, 1941 (R. 95–96, 105–106, Bd. Exh. 22), 7 supervisory or clerical employees (Anna Darwesh, Shemovan (Sam) Perperian, Luke Krikorian, Ruth Kiesling (Lanouette), Jacob Friedman, Harry Yosper, and Minnie Yosper), 5 persons whose names appear thereon as having been hired after June 12 (Mary Zasso, Wave Cram, Olive Clark, Rose Hatem, and Theo. Proulx), and 2 persons whose names appear thereon as having left petitioner's employ before June 5 (Elio Melucci and Joseph Tarallo (R. 16, note 17)). The Board found (R. 16) that the Union had been designated by 46 of the employees, apparently erroneously including in the number Elio Melucci, whose designation is in evidence (Bd. Exh. 12–28) but who was not employed in the unit on June 9.

resentatives that the "best" thing to do was to leave petitioner alone for the next 6 months (R. 40–41, 43–48, 50–53, 90–91). The Union thereupon filed with the Board a petition for an investigation and certification of representatives, and subsequently entered into an agreement with petitioner for a consent election to be conducted by the Board on July 25 (R. 62, 64, 66, 68, 79, Bd. Exhs. 6 and 9). During the week preceding the scheduled election petitioner engaged in a campaign of hostile activities against the Union during which supervisory employees threatened that if the Union won the election petitioner would close its plant (R. 78–79, 80, 81–82, 84–89, 98–99, 104, 107, 108, 113), declared that the Union was "no good" (R. 80), and attempted to persuade employees to withdraw their support from the organization (R. 59–60). Principally as a result of these activities, the Union refused to proceed with the election (R. 73–74, 85–87, 89). Thereafter petitioner continued its anti-union activities and threats of disaster if the Union "got in" (R. 55–56, 57–58, 75–78, 79–80, 83–84, 95, 130), and resisted Board efforts to have it post a notice in the plant, advising the employees, among other things, that "there will be no shutdown of the plant caused by employees selecting a union" (R. 91, 115–118, Resp. Exhs. 14, 14a, 17, R. 131–132).[3] The Board found that the

[3] The proposed notice was to be posted in adjustment of unfair labor practice charges. Petitioner insisted that a pro-

foregoing activities constituted unfair labor practices within the meaning of Section 8 (1) and (3) of the Act (R. 18–20, 27).

Following petitioner's unlawful acts and while the case was pending before the Board in regular course, there was a normal business turnover among a minority of the personnel in the unit. During this turnover, as appears from petitioner's pay roll for the week ending March 5, 1942, which it introduced in evidence (R. 113–115; Resp. Exh. 22, R. 132–134),[4] 23 of the 80 employees in the unit, of whom 13 were among the 45 who had designated the Union, left petitioner's employ,[5] and 28 new persons were hired in the unit, so that only 32 of the employees who had designated the Union were included among the 85 employees then in the unit.[6] Petitioner claimed before the Board

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visо be added: "However, if the union wins their election and makes excessive demands on the company, the company may cease operations and close the plant" (R. 91–93; Resp. Exh. 17, R. 132). Petitioner's officer admitted at the hearing that it had no reason to believe the union would make excessive demands, that its business was in a sound state, and that it did not otherwise contemplate the discontinuance of the business (R. 93–95).

[4] This is the pay roll which includes the period immediately preceding issuance of the Board's complaint on March 2, 1942.

[5] At least one (R. 82) was discharged (R. 23–25) and two (R. 109, Tr. 164, 168) entered the armed forces (R. 16, note 16).

[6] See R. 113–115, 132–134.

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that this circumstance precluded the normal bargaining order requiring it to deal with the Union (R. 25–26, n. 24). The Board considered the effect to be given petitioner's showing in this regard, but decided that "this alleged loss of majority" should not be "determinative of the remedy." It found that "the only means" by which petitioner's refusal to bargain could be remedied and the policies of the Act effectuated was by an order requiring petitioner to deal with the Union which represented a majority at the time the unfair labor practices were committed (R. 25–26, n. 24). The Board concluded that as a matter of law the Union had at all times since its designation been and still was the exclusive representative of petitioner's employees (R. 18, 26–27). The Board therefore, ordered petitioner to cease and desist from its violations of the Act, upon request to bargain collectively with the Union, and to post appropriate notices of compliance (R. 27–28).

Thereafter the Board filed in the court below a petition for enforcement of its order (R. 135–137) and on July 27, 1943, the court handed down its opinion (R. 138–148) and entered its decree (R. 148) enforcing the Board's order. On January 10, 1944, this Court granted petitioner's petition for certiorari to review the propriety of the affirmative bargaining order (R. 152).

SUMMARY OF ARGUMENT

The Board properly ordered petitioner to bargain collectively with the Union despite a showing that sufficient of the employees who had designated the Union had left petitioner's employment so that it no longer retained an actual majority status.

This Court has uniformly held even in cases in which employees were urging that they no longer desired to be represented by the union with which the employer refused to bargain, that it is for the Board and not the courts to determine whether the employer should still be required to bargain with that union. *National Labor Relations Board* v. *P. Lorillard Co.*, 314 U. S. 512; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 339–340; *International Ass'n of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82. The rationale, which underlies all of the cited cases, is that an employer's unfair labor practices have a deterrent effect upon employees joining or remaining members of labor organizations; that while this discouraging effect is operative, the existence of other factors in the situation which might also be thought to obscure or destroy the representative status of the union with which the employer has refused to bargain, does not preclude the Board from tracing the change to the unfair labor practices; and that an order to bargain is an appropriate remedy for a

refusal to bargain. The validity of these considerations as applied to the facts of the instant case is readily apparent.

Petitioner's refusal to bargain and its campaign against the Union disrupted the morale of the employees who had already joined. They found their objective in joining, that is, to obtain collective bargaining, frustrated, and membership not only futile but threatening to their jobs. For similar reasons the refusal to bargain made it difficult for the Union to secure recruits among the old employees who had previously not joined or among the new employees who later entered petitioner's employ. Moreover, if petitioner had bargained, it is probable that one of the purposes of the Act, the making of a collective-bargaining agreement, would have been achieved. Such a contract would have given the Union a powerful impetus to further organization. In these circumstances it would be arbitrary to assume that the Union would have lost its majority if petitioner had dealt with it as the law required; accordingly, the Board could reasonably conclude, as the court below held (R. 147), that but for petitioner's illegal conduct the Union probably would have retained its majority status by accessions despite the loss of members resulting from normal labor turnover.

Even in the absence of an unfair labor practice, employers are often required to bargain with

representatives which are not the actual choice of a majority of the employees in the unit at the time the bargaining takes place. The system of collective bargaining established by the Act would be rendered unworkable if every change in sentiment among the employees or every change in personnel in the unit required a new determination of the bargaining representative. There is thus nothing improper in requiring petitioner as a remedy for its unfair labor practices to bargain with the last freely chosen representative of its employees.

ARGUMENT

THE BOARD'S ORDER REQUIRING PETITIONER TO BARGAIN COLLECTIVELY WITH THE UNION IS VALID

The instant case is another in the long line of cases in which an employer who has refused to engage in collective bargaining with his employees' properly designated representative seeks to derive some advantage from his illegal conduct by contending that he should be permitted to continue to refuse to deal with the organization because subsequent events have obscured or destroyed its continued majority status.[7] In the

[7] *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 339–340; *National Labor Relations Board* v. *P. Lorillard Co.*, 314 U. S. 512; *National Labor Relations Board* v. *Clinton E. Hobbs Co.*, 132 F. (2d) 249, 252 (C. C. A. 1); *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 F. (2d) 681, 690–691 (C. C. A. 1); *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 118 F. (2d) 874, 880

instant case the subsequent events upon which the employer relies for this purpose are the fact

(C. C. A. 1), certiorari denied, 313 U. S. 595; *National Labor Relations Board* v. *Federbush Co.*, 121 F. (2d) 954, 956 (C. C. A. 2); *National Labor Relations Board* v. *Karp Metal Products Co.*, 134 F. (2d) 954 (C. C. A. 2), bargaining order (42 N. L. R. B. 119, 153–155; 51 N. L. R. B. 621) enforced without opinion, October 23, 1943, pending on certiorari, No. 602, this Term; *National Labor Relations Board* v. *Medo Photo Supply Corp.*, 135 F. (2d) 279, 281 (C. C. A. 2), certiorari granted, No. 265, this Term; *National Labor Relations Board* v. *A. Sartorius & Co.* (not yet reported), decided January 31, 1944 (C. C. A. 2); *National Labor Relations Board* v. *George P. Pilling & Son Co.*, 119 F. (2d) 32, 39 (C. C. A. 3); *Oughton* v. *National Labor Relations Board*, 118 F. (2d) 486, 498 (C. C. A. 3), certiorari denied, 315 U. S. 797; *National Labor Relations Board* v. *Poultrymen's Service Corp.*, 138 F. (2d) 204, 211 (C. C. A. 3); *National Labor Relations Board* v. *Moltrup Steel Products Co.*, 121 F. (2d) 612, 618 (C. C. A. 3); *National Labor Relations Board* v. *New Era Die Co.*, 118 F. (2d) 500, 505 (C. C. A. 3); *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, 640 (C. C. A. 4); *Great Southern Trucking Co.* v. *National Labor Relations Board* (on contempt) (not yet reported), decided January 10, 1944 (C. C. A. 4); *National Labor Relations Board* v. *Dixie Motor Coach Corp.*, 128 F. (2d) 201, 202 (C. C. A. 5); *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, 478 (C. C. A. 5); *National Labor Relations Board* v. *Porcelain Steels, Inc.*, 138 F. (2d) 840 (C. C. A. 6); *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. (2d) 618, 621 (C. C. A. 6); *National Labor Relations Board* v. *Swift & Co.*, 127 F. (2d) 30, 32 (C. C. A. 6); *National Labor Relations Board* v. *Chicago Apparatus Co.*, 116 F. (2d) 753, 758 (C. C. A. 7); *M. H. Ritzwoller Co.* v. *National Labor Relations Board*, 114 F. (2d) 432, 437–438 (C. C. A. 7); *Valley Mould & Iron Corp.* v. *National Labor Relations Board*, 116 F. (2d) 760, 765 (C. C. A. 7), certiorari denied, 313 U. S. 590; *National Labor Relations Board* v. *Blanton Co.*, 121 F. (2d) 564.

that during the normal interval which necessarily elapsed between petitioner's original refusal to bargain and the time of the Board's complaint and hearing, there occurred in regular business course a turn-over among a minority of petitioner's employees so that the Union, whose majority status petitioner had originally refused to respect, ceased to retain that status.

Petitioner's argument is that in these circumstances the principles established by this Court in *National Labor Relations Board* v. *P. Lorillard Co.*, 314 U. S. 512; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318; and *International Ass'n of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, are inapplicable and the case is controlled by *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

The court below rejected petitioner's contention. It held (R. 148) that "The fact that it may be shown that by lapse of time the union had been unable to retain its majority, is not a sufficient

369 (C. C. A. 8); *Busmann Mfg. Co.* v. *National Labor Relations Board*, 111 F. (2d) 783, 788 (C. C. A. 8); *National Labor Relations Board* v. *Crown Can Co.*, 138 F. (2d) 263, 267 (C. C. A. 8); *National Labor Relations Board* v. *Wm. Tehel Bottling Co.*, 129 F. (2d) 250, 254 (C. C. A. 8); *National Labor Relations Board* v. *Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 198 (C. C. A. 9); *Continental Oil Co.* v. *National Labor Relations Board*, 113 F. (2d) 473, 480–481 (C. C. A. 10), certiorari denied in this respect, 311 U. S. 637; *Colorado Fuel & Iron Corp.* v. *National Labor Relations Board*, 121 F. (2d) 165, 175–176 (C. C. A. 10).

basis for refusing to order affirmatively that the [petitioner] bargain with the union"; and that "the language of the Supreme Court in the *Lorillard* case compels us to affirm the Board once it has reached [the] conclusion" that such an order is necessary "in order to effectuate the purposes of the Act."

We submit that the holding of the court below is correct and that in the instant case there are even more compelling reasons for enforcing the Board's order than were present in the *Lorillard* case and the earlier decisions, for here no employee has objected to representation by the union, whereas in each of those cases another labor organization had been chosen as their representative. We shall first review briefly the facts and holdings in the *Lorillard* and antecedent cases, and then demonstrate that the scope of the holdings in those cases embraces the instant case and that petitioner's attempt to distinguish them is without substance. Finally, we shall show that the *Fansteel* and *National Seal* cases on which petitioner relies are inapposite.

1. ***The facts and holdings in the Lorillard and antecedent cases.***—In the *Lorillard* case an unaffiliated association formed after the unfair labor practices occurred sought to intervene before the Board and establish that it was the statutory representative of the employees. The employer as a

result urged that he should not be obliged to bargain with the first statutory representative until its status was determined by an election because, as appeared from the intervening association's petition, the first representative had lost its majority status for reasons unrelated to the company's unlawful acts. In that case the asserted reasons for the alleged loss of majority were the lapse of time between the date of the union's established majority status and the issuance of the Board's decision and order, and the fact that in the interval a strike accompanied by violence had occurred, during which some 650 employees, who constituted a majority of the bargaining unit, had left the union and had formed the intervening association.

The Board held, just as it did in the instant case (R. 25–26, n. 24), that despite this circumstance an affirmative bargaining order was necessary to effectuate the policies of the Act and to remedy the situation resulting from the employer's original illegal refusal to bargain (16 N. L. R. B. 684, 700). It pointed out, quoting from its earlier decision in *Matter of Inland Steel Company*, 9 N. L. R. B. 783, 815–816, that—

> The necessary delays incident to the adjudication of a dispute have postponed the Board's order until a time considerably subsequent to the original wrongful refusal to bargain. The refusal to bargain collec-

> tively disrupts the morale of the men, has a deterring effect upon the organizational activity of the union and a discouraging influence on members already gained which tends to induce them to drop from the ranks. * * * If an order to bargain collectively cannot be deemed an appropriate remedy for the refusal to bargain collectively unless the [union's] majority is kept intact until the Board can issue a decision, * * * the [employer] would be permitted further to evade the obligation of Section 8 (5) by profiting from the discouraging effects of its already accomplished violation of that very obligation.

Accordingly, the Board concluded that by requiring the employer to bargain with the union, it would (16 N. L. R. B. at p. 700)—

> * * * disregard any effect the unfair labor practices may have had upon the status of [the union] as majority representative and [would] restore the situation existing at the time of the refusal to bargain, as far as possible.

Upon the Board's petition for enforcement of its order, the circuit court of appeals, as appears from the face of its opinion, entertained the view for which petitioner in the instant case contends. It distinguished, as petitioner here seeks to do (Br. 6–7), the *Machinists* and *Bradford Dyeing* cases in which as it thought, "No circumstances were alleged giving reasonable grounds

for believing that the union was no longer the choice of a majority of the employees; the reasonable inference was that the employer had exercised some coercion" (117 F. (2d) 921, 925), and it held in substance, citing the *Fansteel* decision, that where circumstances did appear demonstrating a "shift in sentiment * * * caused by other factors than the employer's refusal to bargain collectively" (117 F. (2d) 921, 925), the Board could not trace the loss of majority to the employer's illegal conduct and could not validly require the employer to remedy his refusal to bargain by an order to bargain. The circuit court thought that "lapse of time" and a "change in the conditions" due to the strike and accompanying violence presented such circumstances, for, it declared, "the cessation of employment and the violence engendered in the course of the strike would have the natural result of alienating members from the union," and the lapse of time made it "still more problematical whether the union [still] represents the majority of the employees" (117 F. (2d) 921, 925). Accordingly, it conditioned enforcement of the Board's bargaining order upon the holding of an election to determine that question (*ibid.*).

This Court reversed the decision. In a *per curiam* opinion, the Court stated (314 U. S. 512, 513):

> The Board had considered the effect of a possible shift in membership, alleged to

> have occurred subsequent to Lorillard's unfair labor practice. But it had reached the conclusion that, in order to effectuate the policies of the Act, Lorillard must remedy the effect of its prior unlawful refusal to bargain by bargaining with the union shown to have had a majority on the date of Lorillard's refusal to bargain. This was for the Board to determine, and the court below was in error in modifying the Board's order in this respect. *Labor Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 339–340; *I. A. of M.* v. *Labor Board*, 311 U. S. 72, 82. * * *

In the *Bradford Dyeing* case, cited in the *Lorillard* opinion, the Board had found (4 N. L. R. B. 604, 616–617, 618) that the union's loss of majority subsequent to the refusal to bargain was attributable to the refusal to bargain and other unlawful acts, and it had ordered the employer to remedy the refusal by bargaining. This Court upheld the Board's findings tracing the loss of majority to the illegal conduct, and ruled that the Board could properly disregard this loss because the unfair labor practices of the employer "cannot operate to change the bargaining representative previously selected by the untrammelled will of the majority" (310 U. S. 318, 339–340).*

* Lapse of time was also urged by the employer in that case as accounting for the union's loss of majority (Brief for respondent, No. 588, October Term, 1939, p. 68), but this factor was not noticed in the opinion of this Court.

In the *Machinists* case, likewise, the Board had refused "to recognize petitioner's notice of change" (311 U. S. 72, 82) of sentiment among the employees after the unfair labor practices. This Court stated that this was "wholly proper," citing the *Bradford Dyeing* case (*ibid.*). It pointed out that the true wishes of the employees could only be determined "after [the] unfair labor practices have been removed as obstacles to the employees' full freedom of choice" (311 U. S. 72, 83), and that "how the effect of prior unfair labor practices may be expunged" is for the "expert judgment" of "the Board, not the courts" (311 U. S. 72, 82). And it stated (*ibid.*)—

> It cannot be assumed that an unremedied refusal of an employer to bargain collectively with an appropriate labor organization has no effect on the development of collective bargaining. See *National Labor Relations Board* v. *Pacific Greyhound Lines*, 303 U. S. 272, 275. Nor is the conclusion unjustified that unless the effect of the unfair labor practices is completely dissipated, the employees might still be subject to improper restraints and not have the complete freedom of choice which the Act contemplates.* * * *

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*Lapse of time and a jurisdictional strike were also urged in the *Machinists* case as accounting in part for the union's alleged loss of majority (Brief for appellants, No. 16, October Term, 1940, pp. 8–9, 12–13, 41–46, 51), but these circumstances were likewise not adverted to by this Court in its opinion.

2. *The scope of the Lorillard and earlier decisions embraces the instant case.*—It is, we think, apparent from the foregoing statement of the facts and holdings in the *Lorillard, Machinists,* and *Bradford Dyeing* cases, that the scope of those decisions embraces the instant case. Those cases obviously proceed upon the basis that an employer's unfair labor practices have a deterrent effect upon employees joining or continuing their membership in labor organizations; that while this discouraging effect is operative, the existence of other factors in the situation which might also be thought to affect the representative status of the union does not preclude the Board from tracing the change to the unfair labor practices (cf. *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105); that the precise or probable weight of these other factors as compared to the unfair labor practices cannot be isolated and separately evaluated, and it is for the employer, as the wrongdoer, to disentangle the consequences of his wrong for which he is responsible from those for which he is not (cf., *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 872 (C. C. A. 2), certiorari denied, 304 U. S. 576, 585); and that an order to bargain is an appropriate remedy for a refusal to bargain.[10]

[10] The considerations which support the Board's affirmative bargaining order have been stated from time to time in

These considerations are as fully applicable to the facts of the instant case as they were to the facts of the *Lorillard* case. In the instant case, the "other factors than the employer's refusal to bargain" which are advanced as alleged reasons for the loss of majority are a normal turnover among some of the employees in the unit. But whether such turnover or the strike and violence in the *Lorillard* case be the "other factors," in either case the employer's refusal to bargain with the union has a discouraging effect upon the employees' joining or remaining in the organization. It deprives the union of its only purpose for being and the employees of their only purpose in joining it, viz, to secure collective bargaining. And it is equally true in either case, that while this discouraging effect is operative, the precise or probable weight of the "other factors" which might be thought also to obscure or

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the Board's decisions, e. g., *Matter of Bradford Dyeing Ass'n*, 4 N. L. R. B. 604, 616–617, 618; *Matter of P. Lorillard Co.*, 16 N. L. R. B. 684, 699–700; *Matter of Medo Photo Supply Corporation*, 43 N. L. R. B. 989, 999; *Matter of Karp Metal Products Co.*, 51 N. L. R. B. 621, and have been argued to this Court on three preceding occasions. *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, No. 588, October Term 1939, Brief for the National Labor Relations Board, pp. 39–60, Reply Brief, pp. 14–17; *International Association of Machinists* v. *National Labor Relations Board*, No. 16, October Term 1940, Brief for the National Labor Relations Board, pp. 62–78; the *Lorillard* case, No. 71, October Term 1941, Brief for the National Labor Relations Board, pp. 10–27.

destroy the representative status of the union cannot be isolated and separately evaluated. And, of course, in either case an order to bargain is an appropriate remedy for a refusal to bargain.

In the instant case petitioner's "dilatory tactics, its refusal to recognize the union as a bargaining representative, and its campaign against the union" (opinion of the court below (R. 147)), including threats and warnings that the plant would close if the Union "got in," obviously disrupted the morale of the employees who had already joined it, and discouraged their active support of it, for they found their objective in joining frustrated and membership not only futile but threatening their jobs. Indeed, it was principally because of this interference and the fears engendered among the employees, that the Union decided not to continue with the election although it had previously obtained the adherence of a majority of the employees (*supra*, p. 4). Likewise, this unlawful activity of petitioner made it difficult or impossible for the Union to secure recruits among the old employees who had previously not joined, for it emphasized to them the dangers and futility of membership. It also made it more difficult or even impossible for the Union to secure adherents among the new employees who in normal business course entered petitioner's employ. It cannot be assumed that these new employees did not learn of petitioner's

attitude which had the same discouraging effect upon their affiliation as it had upon the old employees toward whom petitioner's unlawful conduct had been immediately directed. It is noteworthy in this regard that petitioner had refused to post a notice to its employees assuring them in unequivocal terms that there would be no shut-down of the plant caused by the employees joining the Union (*supra*, p. 4). And quite naturally, new employees coming to work for petitioner would be far more reluctant to join the Union in the circumstances than they would if it were operating as a "going concern" in bargaining with petitioner.

Moreover, it is reasonable to believe, as the Act assumes (Section 1), that if petitioner had dealt with the Union as the law requires, the parties would have concluded a collective bargaining agreement.[11] Such a contract would have given the Union an impetus which petitioner's illegal tactics denied it. This Court pointed out in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 267, that "once an employer has conferred recognition on a particular organization it has a marked advantage over any other in securing the adherence of

[11] See *Consolidated Edison* v. *National Labor Relations Board*, 305 U. S. 197, 236; *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342; *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514.

employees * * *." Cf. *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 568–569. And two authorities in the labor relations field have noted (Reynolds, Lloyd G., and Killingsworth, Charles C., *The Union Security Issue,* Annals of the American Academy of Political & Social Science, vol. 224, Nov. 1942, pp. 32, 38):

> Where labor turnover is high the union's majority may be diluted rapidly by a continued influx of nonunion men into the plant. * * * Union officers generally appear to believe, however, that this inadequacy is not serious. When the union has no strong rivals in the plant, when it commands a safe majority, and when it enjoys contractual relations with the employer, it is usually not very hard to persuade a majority of new employees to sign up.[12]

In the instant case, moreover, so far as appears, the Union has been able to retain the adherence of 32 of the 85 employees in the unit, despite petitioner's uncorrected refusal to bargain and threats of reprisal, and it needed to recruit only 11 of the

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[12] See, also, Feller, Alexander, and Hurwitz, Jacob E., *How to Deal with Organized Labor* (N. Y. 1937), pp. 6–7; Cummins, E. E., *The Labor Problem in the United States* (N. Y. 1935), p. 207; Stein, Emanuel, and Davis, Jerome, *Labor Problems in America* (N. Y. 1940), p. 664; Slichter, Sumner, *The Government and Collective Bargaining,* Annuals of the American Academy of Political & Social Science, vol. 118, March 1935, pp. 107, 116.

53 non-members to retain its majority. Furthermore, of the 85 employees in the unit, 57 were in petitioner's employ at the time of the original refusal to bargain, of whom 25 were old employees who had not joined the Union. Moreover, disregarding new employees, a majority of the old employees in the unit are still union members. (*supra*, p. 5). We submit that in these circumstances it would be wholly arbitrary to assume that the Union's majority status would not have continued if petitioner had acted lawfully and obeyed the command of the statute,[13]

Accordingly, the court below was entirely correct in applying (R. 147) the doctrine of the *Lorillard, Machinists,* and *Bradford Dyeing* cases to the instant case. It correctly held (R. 147) that petitioner's—

> dilatory tactics, its refusal to recognize the union as a bargaining representative, and its campaign against the union deprived it of the opportunity of strengthening its organization. It demonstrated the union's inability to reach an agreement with the employer with the result that as time went

[13] It may be noted that none of petitioner's employees, either in person or through a competing union, has questioned the Board's finding that the Union at all times since it first sought to bargain has been and still is the exclusive representative of all the employees in the appropriate unit (R. 18, 26–27). Cf. *National Labor Relations Board* v. *National Mineral Co.*, 134 F. (2d) 424, 426 (C. C. A. 7), certiorari denied, No. 208, this Term; *National Labor Relations Board* v. *Whittier Mills Co.*, 111 F. (2d) 474, 478 (C. C. A. 5).

> on the enthusiasm of its members waned and it made it more difficult for the union to capture the allegiance of other employees, either old employees who had previously not joined, or new employees who came in after the unfair labor practices were committed.

and that (R. 147)—

> The Board might reasonably conclude that had the union been recognized and installed as bargaining representative of the employees, as the law required, it probably would have retained its majority status by accessions from these sources, despite its loss of members resulting from normal labor turn-over.

Four recent circuit court decisions, in addition to the decision in the instant case, squarely support the foregoing views. *Great Southern Trucking Company* v. *National Labor Relations Board* (contempt proceedings), not yet reported, decided January 10, 1944 (C. C. A. 4); *National Labor Relations Board* v. *Porcelain Steels, Inc.*, 138 F. (2d) 840 (C. C. A. 6); *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. (2d) 618, 621 (C. C. A. 6); *National Labor Relations Board* v. *Clinton E. Hobbs Co.*, 132 F. (2d) 249, 252 (C. C. A. 1). See also *National Labor Relations Board* v. *Medo Photo Supply Corp.*, 135 F. (2d) 279, 281 (C. C. A. 2), certiorari granted, No. 265, this Term; *National Labor Relations Board* v. *Karp Metal Products Co., Inc.*, order dated October 23, 1943 (C. C. A. 2), enforcing without opin-

ion 51 N. L. R. B. 621, pending on certiorari, No. 602, this Term; *National Labor Relations Board* v. *A. Sartorius & Co.*, decided January 31, 1944 (C. C. A. 2). In each of these cases, the Circuit Court of Appeals, relying upon the *Lorillard* and antecedent cases, upheld the Board's power to remedy a refusal to bargain by an order so to do, despite the employer's contention that the union had subsequently lost its majority due to a normal turnover in employee personnel. There are no decisions since *Lorillard* to the contrary.[14]

In the *Great Southern Trucking* case, which arose upon the Board's petition to adjudge the employers in contempt for failing to bargain with a union, as required by the Board's order previously enforced by the court (127 F. (2d) 180, certiorari denied, 317 U. S. 652), it appeared that the employers sought, as the court stated in its opinion, "to extricate themselves from the plight of their own wrong doing, * * * on the ground that the Union has lost its majority status * * * after the entry of our decree * * *." The court nevertheless held the employers in contempt, stating—

> While it is true that the loss of majority in the instant case occurred, not among the employees composing the original working force of the Company, but rather among the changed personnel composed largely of

[14] We discuss below (pp. 38–40) the cases which petitioner cites to the contrary, but which we think are not in point.

> new employees who replaced the discharged employees, the principle that the union is entitled to a reasonable presumption of the continuity of its majority status and an employer may not profit by its own wrong doing is nonetheless applicable.
>
> The failure of the Company to take the curative action dictated by us necessarily must have had a telling impact on the new employees. Indeed, had the Company acted lawfully and obeyed the command of our decree by recognizing and bargaining with the Union, the Union probably would have recruited in its ranks a proportionate share of adherents from the new employees.

In the *Porcelain Steels* case, precisely as here, the employer introduced evidence at the hearing before the Board tending to show that the union at that time did not represent a majority of the employees in the unit. The court nevertheless enforced the Board's bargaining order. It specifically approved the Board's inference that, "except for the unfair labor practices of the respondent, the Union 'would have been able to recruit from among the new employees a sufficient number to maintain its majority.'" 138 F. (2d) 840, 841. The court briefly reviewed the *Bradford Dyeing, Machinists,* and *Lorillard* decisions of this Court and declared that the contentions of the employer to the contrary, "are in direct contravention of [these] adjudications * * *." 138 F. (2d) at pp. 841–842. Likewise, in the *Burke*

Machine Tool case, the court stated (133 F. (2d), at 621):

> * * * the Board was entitled to conclude, as it fairly appears to have done * * *, that such loss could not be separated from the unfair labor practices and that the effect of the refusal to bargain should be remedied by affording the employees an opportunity to restore the status quo. *International Ass'n of Machinists* v. *National Labor Relations Board,* 311 U. S. 72, 82; *National Labor Relations Board* v. *Bradford Dyeing Ass'n,* 310 U. S. 318, 339, 340.

And in the *Karp Metal Products* case, which petitioner cites (Br. 8, 14), the court enforced an order to bargain collectively despite a subsequent turnover in the employer's personnel which probably removed the union's majority.

In view of the foregoing, there clearly is no merit in petitioner's suggestion (Br. 10) that, "Since at the time of the hearing the Union did not represent a majority, it would be an injustice to the employees to establish an exclusive bargaining representative for them." The inference is permissible that but for petitioner's illegal conduct, the Union would still enjoy the continued adherence of the majority. Moreover, as the Circuit Court of Appeals for the Fourth Circuit pointed out in the *Great Southern Trucking Company* case, *supra,* the bargaining order does not grant the Union a permanent status as

representative, or status for any fixed period of time. On the contrary, should the employees, after conditions permitting a free choice have been restored, really desire different representation, the Act provides adequate machinery "in order to guarantee that their genuine desires can be ascertained and respected." See also, the *Machinists case*, 311 U. S. at 83; and *Oughton* v. *National Labor Relations Board*, 118 F. (2d) 486, 497, 498–499 (C. C. A. 3), certiorari denied, 315 U. S. 797. "But until the Company purges itself of its unlawful conduct * * *, the employees' true desires 'are matters of speculation and argument.' *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867, 872 (C. C. A. 5th, 1940), certiorari denied, 310 U. S. 651 (1940)." The *Great Southern Trucking* case.[15]

3. *Petitioner's attempts to distinguish the Lorillard and antecedent cases.*—Petitioner does not attempt to show that the foregoing considerations lose their force when applied to the facts of the instant case, or that it is unreasonable to believe that if it had bargained with the Union, that organization would have been able to recruit other

[15] In four of the cases in which courts have enforced Board orders requiring an employer to bargain with a union which has assertedly lost its majority, the Board subsequently conducted elections to determine the true choice of the employees. See the cases of *Biles-Coleman*, *Louisville Refining* (102 F. (2d) 678 (C. C. A. 6)), *Blanton*, and *Ritzwoller*, and footnotes f, h, and i in Appendix B, *infra*, p. 50.

members among the old employees or to absorb new accretions of personal, sufficient to maintain its majority status.[16] But it seeks to distinguish the *Lorillard* decision upon the basis that (Br. 7–8)—

> In the *Lorillard* case the record did not disclose that the union had lost its majority because of loss of membership due to the fact that employees had voluntarily quit. There, *after the hearing had been closed* and after the Trial Examiner had rendered his report, a strike occurred. During the strike a union was formed which petitioned the Board for permission to intervene and filed a petition for investigation and certification of representatives.
>
> The Board denied the petition to intervene. In the administration of the Act there are long delays necessarily incident to the procedure. If the Board were to permit the opening of the record on such a petition, it would necessarily involve fur-

[16] There is no suggestion that new skills characterize petitioner's operations, that a new legitimate union has captured the allegiance of the employees, or that any other circumstances have arisen to render the plant an inappropriate forum for the Union's activities. Cf. *National Labor Relations Board* v. *National Mineral Co.*, 134 F. (2d) 424 (C. C. A. 7), certiorari denied, No. 204, this Term. Where there had been an expansion of a unit from 59 to approximately 200 employees since the failure to bargain, the Board refused to require the employer to bargain with the originally chosen representative. *Matter of Benjamin Fainblatt*, 4 N. L. R. B. 596, 600–601.

> ther delays and hinder the administration of the Act. The Supreme Court held that the Board was not in error. It is respectfully submitted that the case is distinguishable from the case at the bar. [Italics added].[17]

It further asserts, that in the *Lorillard, Machinists,* and *Bradford Dyeing* cases the Board made necessary findings as to the coercive effects of the unfair labor practices upon employees joining or retaining their membership in a labor organization (Br. 6, 14), whereas in the instant case, petitioner asserts, the Board found that "the loss [of majority] was not due to unfair labor practices" (Br. 7, 9).

We have already demonstrated that the circumstance that the intervening "other factors" than the refusal to bargain which affected the Union's majority status were a normal turnover in personnel, rather than "lapse of time and the change in the conditions" due to a strike and violence as in the *Lorillard* case,[18] does not constitute a difference of any legal consequence between the two cases. In either case, the aforementioned considerations which underlie the affirmative bargaining order are equally cogent. We have also

[17] See also petitioner's attempt to distinguish the *Machinists* case upon the basis that "the union in that case made no showing *at the hearing* that a majority * * * had shifted * * *" (Br. 7). [Italics added.]

[18] See also note 8, p. 16, *supra.*

demonstrated the consistently approving views of the circuit courts of appeals which have had recent occasion to pass upon the question. We shall now show that petitioner's reliance upon the alleged differences between the instant case and the *Lorillard* and earlier cases based upon the particular time during the course of the proceedings when the employer sought to show the alleged loss of majority, or upon the nature of the Board's findings, is also without merit.

a. *Alleged differences based upon considerations of orderly and effective administration of the Act.* It is true, as petitioner suggests (Br. 8), that in the circumstances of the *Lorillard* case effective and orderly administration of Section 8 (5) of the Act was prevented by the circuit court of appeals' modification of the Board's order. For, as the Board pointed out in its brief to this Court in that case (pp. 22–23)—

> If, as the court below held, one such claim [of loss of majority] made months after the close of the hearing must be inquired into, successive claims advanced after each succeeding hearing would likewise have to be entertained, with the result of indefinitely delaying the bargaining order and frustrating the purposes of the Act. * * * [Such] rule would necessarily "make a merry-go-round of the Act." *International Association of Machinists* v. *National Labor Relations Board*, 110 F. (2d) 29, 33 (App. D. C.), affirmed 311 U. S. 72.

But this consideration was not expressely relied upon by the Court in the *Lorillard* case. On the contrary, the Court held that it "was for the Board to determine" whether a bargaining order was necessary to "remedy the effect" of Lorillard's prior unlawful refusal to bargain and to effectuate the policies of the Act (314 U. S. 512). In so holding, the Court cited the *Bradford Dyeing* and *Machinists* cases. In the former case this differentiating factor upon which petitioner relies was not even present. Moreover, while it was present in the *Machinists* case, the Court did not advert to it in its opinion in that case either, but expressly held that "the failure of the Board to recognize petitioner's notice of change [in sentiment among the employees] was wholly proper" because (311 U. S. 72, 82)—

> It cannot be assumed that an unremedied refusal of an employer to bargain collectively with an appropriate labor organization has no effect on the development of collective bargaining. See *National Labor Relations Board* v. *Pacific Greyhound Lines*, 303 U. S. 272, 275. Nor is the conclusion unjustified that unless the effect of the unfair labor practices is completely dissipated, the employees might still be subject to improper restraints and not have the complete freedom of choice which the Act contemplates. * * *

It is thus apparent that this consideration upon which petitioner relies to differentiate the instant

case from the earlier cases was not the *ratio decidendi* of the earlier decisions, but that they proceeded upon bases which are common to all of the cases including this one.

This view is supported by the recent Circuit Court of Appeals decisions to which reference has been made (*supra*, pp. 24–27). In none of these was the factor upon which petitioner relies referred to by the court. Moreover, the *Porcelain Steels* case (138 F. (2d) 840) is squarely contrary to petitioner's contention. In that case, as has been demonstrated (p. 26, *supra*), just as in the instant case, the evidence as to loss of majority was introduced at the hearing before the Board. The court nevertheless enforced the Board's bargaining order upon the authority of the *Lorillard*, *Machinists* and *Bradford Dyeing* cases. See also the *Burke Machine Tool* decision (133 F. (2d) 618, 620). It is also noteworthy that in the *Karp Metal Products* case, 134 F. (2d) 954 (C. C. A. 2), which petitioner cites (Br. 8) as giving "weight" to its contention in this regard, the evidence of alleged loss of majority was proffered after the Board hearing and before issuance of the Board's decision and order, just as in the *Lorillard* and *Machinists* cases. In that case, too, the court apparently did not regard the "administrative" argument as conclusive, however, but remanded the case to the Board for findings as to *"how far the respondent's earlier unfair trade practices continue to vitiate any*

choice of a representative by its employees; that is for the Board [to determine]." 134 F. (2d) 954, 955. [Italics added.]

We think it clear, therefore, that considerations of effective and orderly administration of the Act are not the indispensable factors underlying the *Lorillard* decision. We submit, however; that even if they were, that fact would not distinguish this case. For considerations of effective and orderly administration of the Act are also present in situations like that presented in the instant case.

A considerable period of time necessarily intervenes in all cases between the unfair labor practices and the Board's complaint and hearing, as well as between the hearing and the Board's decision or enforcement of its order. If the employer who is unfriendly to the principles of the Act knows that he will not be required to bargain with the organization selected by the employees if that organization cannot retain its majority status during the period necessarily consumed in the Board's proceedings preliminary to hearing, he will be tempted to violate the statute in the hope that the union's majority will be lost before the Board can act. Moreover, since a premium will thus be placed upon the quick success of his efforts to coerce the employees away from the union, his efforts necessarily will be of a flagrant and provocative character. On the other hand, the union can scarcely be expected in these circumstances to

resort to the peaceful processes of the law; it will resort instead to strikes and other forceful measures. Moreover, it will be tempted, even if it does resort to legal process rather than force, to file hasty and improvident charges, and the Board will be urged to issue hasty complaints and take other quick action which might not be warranted or necessary if there were time for full investigation. Thus, the Congressional scheme and purpose in enacting the Act would be threatened and the effective administration of the statute, at least *pro tanto*, frustrated. Cf., *National Labor Relations Board* v. *Appalachian Electric Power Co.*, decided January 10, 1944 (C. C. A. 4).

b. *Alleged differences based upon Board findings.*—Petitioner's reliance upon alleged differences between the Board's findings in the instant case and its findings in the *Lorillard, Machinists* and *Bradford Dyeing* cases is also without merit. Petitioner asserts that in the instant case "the Board has found that the [Union's] loss [of majority] was not due to unfair labor practices" (Br. 7); and, further, that, "The Board found on the uncontroverted evidence that the loss of majority occurred through no unfair labor practices" (Br. 9). On the other hand, petitioner asserts (Br. 14), that in the *Lorillard* case the Board found—

> The necessary delays incident to the adjudication of a dispute have postponed the

> Board's Order until a time considerably subsequent to the original wrongful refusal to bargain. The refusal to bargain collectively disrupts the morale of the men, has a deterring effect upon the organizational activity of the Union and a discouraging influence on members already gained which tends to induce them to drop from the ranks.

Likewise, in the *Bradford Dyeing* case, petitioner points out (Br. 6), the Board found that "except for the unfair labor practices of the employer, the employees would have remained members" of the union; and in the *Machinists* case, petitioner notes (Br. 7), this Court declared:

> Where as a result of unfair labor practices a union can not be said to represent an uncoerced majority the Board has the power to take appropriate steps to the end that the effect of those practices will be dissipated.

Contrary to petitioner's assertions, the Board did not find in the instant case that the Union's loss of majority was not due to the employer's illegal conduct; on the contrary, as the court below pointed out (R. 147, 144), the Board in effect found that the alleged "loss of majority may be traced to the refusal to bargain * * *," this finding being implicit in the Board's "treatment of [petitioner's] argument" based upon the alleged loss. Thus, while the Board found (R.

25–26, n. 24) that it appeared from petitioner's evidence that a sufficient number of union members had left petitioner's employ by March 5, 1942, "to affect" the Union's majority, it further found that this showing was not "determinative" of the remedy to be ordered and that the only means by which the refusal to bargain could be remedied was an affirmative order requiring petitioner to bargain with the Union (*ibid.*). The Board stated that its determination in this regard reflected what it had "consistently held," and it cited numerous cases, including the *Lorillard, Machinists,* and *Bradford Dyeing* cases, in which such findings had been made (*ibid.*). It thus is clear from the face of the Board's decision and order that its conclusion as to the need for the usual order requiring petitioner to bargain collectively and the bases for that conclusion were in all material respects the same as those announced in the *Lorillard* and other cited cases. There is no inconsistency between the Board's view that the Union's majority was affected by the unfair labor practices, and its finding that the majority had also been affected by the turnover in personnel.

In these circumstances, it was not necessary for the Board to set out in detail all the underlying reasons of experience and policy upon which its conclusions as to the appropriate remedy rested. These were apparent from and had been

stated in the cases cited and in other cases, conclusively showing that the Board exercised its administrative judgment on the question. This was all that petitioner was entitled to. In these circumstances, we submit, the Board's findings are in all material respects the same as those present in the *Lorillard* and earlier cases, and petitioner's suggestion that the Board might have, but "for reasons known only to it" did not make such findings (Br. 15), is without merit.

4. *Petitioner's reliance upon the Fansteel and National Seal cases*—Petitioner's reliance upon *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 261–262 (Br. 4–5, 9–14), is misplaced. In that case the Board's order requiring the employer to bargain with the union rested upon the assumption that all of the discharged employees would be reinstated and those new employees who replaced them discharged. The Board did not determine that there should be an order to bargain if the discharged employees were not restored to their jobs. Nor did the Board argue before this Court that the bargaining order should be enforced were it to be held the 93 discharged employees were not entitled to reinstatement (see Board Brief, No. 436, October Term, 1938, pp. 69–70). There the intervening unlawful acts of the union members and the employer's lawful discharge for that reason of the bulk of the union

membership broke the chain of causation normally leading from the unfair labor practices to the loss of majority. The Board made no assumption that absent a restoration of the discharged strikers, the union in that case would have maintained its majority by accretions from among the old employees who remained or from new employees. The Court's refusal to enforce the bargaining order was in that case a necessary consequence of its refusal to uphold the reinstatement of the 93 strikers. On the other hand, in the instant case, as both the Board and the court below recognized, there was a clear causal connection between the unfair labor practices and the succeeding alleged loss of the Union's majority (pp. 19–24, *supra*).

Petitioner also relies (Br. 8–9) upon *National Labor Relations Board* v. *National Seal Corp.*, 127 F. (2d) 776 (C. C. A. 2). The case is not in point. It involved the question of the propriety of the trial examiner's ruling as to the admissibility of evidence of the union's loss of majority status. The court held that the trial examiner's ruling excluding it was proper for technical reasons, and enforced the Board's bargaining order. Petitioner says that (Br. 9), "The inference is clear that the [Second Circuit] Court's decision would have been different if the respondent had presented substantial evidence of loss of majority not due to unfair labor practices." But whatever "inference" may be

drawn from the language of the opinion in that case, the fact is that when the court was subsequently faced with situations involving losses of majority similar to those involved in the instant case, it upheld the Board's bargaining order. See *National Labor Relations Board* v. *Karp Metal Products Co., Inc.*, enforcing without opinion, October 23, 1943, 51 N. L. R. B. 621, pending on certiorari, No. 602, this Term; *National Labor Relations Board* v. *Medo Photo Supply Corp.*, 135 F. (2d) 279, certiorari granted, No. 265, this Term.

5. *The Circuit Courts of Appeals have uniformly upheld the duty of an employer to bargain with a designated representative for a reasonable period of time irrespective of its majority status at the time bargaining occurs.*—The fact that the Board's order requires petitioner to bargain collectively with a union which may not be the choice of the majority of the employees in the unit at the time bargaining takes place does not in itself render the order improper. Even in instances where the employer has committed no unfair labor practice, he is often required to bargain with a labor organization which may in fact not be the actual choice of the majority of the employees at the time. The workability of collective bargaining requires that some degree of stability attend the designation of a representative. If a designated representative loses his status when-

ever employees change their minds or personnel in the unit shifts as a result of a normal turnover, the whole scheme of collective bargaining envisaged by the Act becomes impracticable.[19] In holding that once a representative is selected by a majority of employees, the representative status must continue until a reasonable period of genuine bargaining has elapsed, the Circuit Court of Appeals for the Second Circuit stated (*National Labor Relations Board* v. *Century Oxford Manufacturing Corp.*, decided February 15, 1944):

> The purpose of the Act is to insure collective bargaining for employees * * * Inherent in any successful administration of such a system is some measure of permanence in the results: freedom to choose a representative does not imply freedom to turn him out of office with the next

[19] The National Labor Relations Board treats the administrative ascertainment of a representative as binding for at least a year absent some special circumstance. Fifth Annual Report of the National Labor Relations Board, 1940, p. 35; cf. Eighth Annual Report of National Mediation Board—1942, pp. 6–7; *Matter of International Ass'n of Oil Field, Gas Well, and Refinery Workers of America, Local No. 284 and Lion Oil Refining Company*, Case No. 74, Decisions of the Petroleum Labor Policy Board (Govt. Print. Off. 1935), pp. 34, 37. However, in plants which are experiencing rapid changes such as those incident to conversion to war production, the Board has not applied its one year rule but has made more frequent determinations of the actual choice of the employees respecting representation. Seventh Annual Report of the National Labor Relations Board—1942, p. 56. Cf. *Matter of Westinghouse Electric Co.*, 38 N. L. R. B. 404.

> breath. As in the case of choosing a political representative, the justification for the franchise is some degree of sobriety and responsibility in its exercise.

To the same effect see *National Labor Relations Board* v. *Applachian Electric Power Co.*, decided January 10, 1944 (C. C. A. 4); *National Labor Relations Board* v. *Botany Worsted Mills*, 133 F. (2d) 876, 881–882 (C. C. A. 3), certiorari denied, 319 U. S. 751.

The Board has found that the holding of employees to their original choice until there has been an opportunity for bargaining vindicates the policies of the Act. This clearly appears from a study of subsequent bargaining relations in cases in which a court required bargaining despite a claim that the representative with whom it ordered the employer to bargain had lost its actual majority status prior to the court's order. The subsequent history of bargaining in each of thirty-two such cases is set out in Appendix B, pp. 48–51, *infra*. In a majority of the cases the employer and the union have entered into collective bargaining contracts, many of which have been renewed from year to year. In four cases subsequent petitions for elections filed, in three cases by a union other than the one with which the employer was directed to bargain, and in one by the latter, were entertained by the Board and elections held.[20] The

[20] This occurred in the cases of *Biles-Coleman*, *Louisville Refining*, *Blanton*, and *Ritzwoller*; see footnotes 7, 9, and 10 in Appendix B, *infra*, p. 50.

results of the study show that the Board's manner of administering this question has proved workable, affording both an opportunity to develop a stable relationship with the union which had been the victim of the unfair labor practice and a subsequent opportunity for determining any change in representation which the employees bring to the attention of the Board.

No unusual circumstance marks this case as different from those included in the study. Indeed, in the instant case there has been a relatively minor turnover of personnel in the unit subsequent to the choice by the majority of the employees of the Union and the unfair labor practices which followed immediately after that choice. Of the 80 employees in the unit at the time of the unfair labor practices, 23 have left petitioner's employ and 28 new persons have been hired. Of the 45 employees who designated the Union as their representative, 32 remain in petitioner's employ and there is no showing that any of them has either revoked his designation of the Union or ceased to desire it to represent him. Thus, excluding the new employees, the 32 remaining Union members constitute a mathematical majority of the 57 old employees. There has been no showing that any of the other 25 old employees who were present at the time of the unfair labor practices have any objection to the Union acting as their representative. Nor is there any showing

that any of the 28 new employees who from time to time replaced old employees leaving petitioner's employment object to such representation. All of these employees have doubtless been informed that the Board has determined that the Union is in law their bargaining representative. None of them has chosen to object either to the Board or the Court. Under these circumstances the Board's order seems eminently proper. For even in cases where employees were objecting,[21] this Court has held that the wisdom of remedying a refusal to bargain by requiring bargaining with the last freely chosen representative is for the Board and not the courts to determine.

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[21] In the *Bradford Dyeing* case the competing Federation was before the Board, the Circuit Court of Appeals for the First Circuit, and this Court, urging that it was the true representative of the employees (Record, No. 588, October Term 1939, pp. 21–22; 106 F. (2d) 119; Brief of Federation in Opposition to Certiorari, pp. 4–6; Brief of Federation on the Merits, p. 18; 310 U. S. 318); in the *Machinists* case the employer accepted and complied with the Board's order, and was not even a party to any of the court proceedings, in which the competing union was the party litigant (110 F. (2d) 29, 32; 311 U. S. 72, 74); in the *Lorillard* case an unaffiliated union sought to intervene before the Board claiming it represented the employees, and the Circuit Court of Appeals for the Sixth Circuit held that the Board should have held an election to determine which union was the actual choice of the employees (117 F. (2d) 921, 925–926).

CONCLUSION

The instant case is in all essential respects identical with the situation presented in *National Labor Relations Board v. P. Lorillard Co.*, 314 U. S. 512, and is clearly controlled by the rationale of that decision and earlier cases. Accordingly, the court below properly enforced the Board's bargaining order, and its decree should be affirmed.

Respectfully submitted.

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FEBRUARY 1944.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., Sec. 151 *et seq.*) as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).
>
> * * * * *
>
> SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.
>
> * * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

APPENDIX B

STUDY OF CASES IN WHICH COURTS HAVE ENFORCED ORDERS REQUIRING BARGAINING DESPITE CLAIMS THAT THE UNION HAD LOST ITS MAJORITY DESIGNATION [1]

I. Total cases in group [2] 42
A. Cases eliminated from study 10
1. Pending in Supreme Court 4
Crown Can Co., 138 F. (2d) 263, 267 (C. C. A. 8).
Franks Bros. Co., 137 F. (2d) 989.
Karp Metal Products Co., Inc., 134 F. (2d) 954 (C. C. A. 2).
Medo Photo Supply Co., 135 F. (2d) 279 (C. C. A. 2).
2. Employer has indicated he will petition for certiorari 2
Great Southern Trucking Co., decided September 23, 1943 (C. C. A. 4).
Poultrymen's Service Corp., 138 F. (2d) 204, 211 (C. C. A. 3).
3. Company out of business 2
Crystal Spring Finishing Co., 116 F. (2d) 969 (C. C. A. 1).
Williams Motor Co., 128 F. (2d) 960 (C. C. A. 8).
4. No information on contract status 2
Hartsell Mills Co., 111 F. (2d) 291 (C. C. A. 4).
Highland Park Mfg. Co., 110 F. (2d) 632 (C. C. A. 4).
B. Number of cases included in study 32

[1] This material was prepared under the direction of Dr. Emily C. Brown, Operating Analyst, National Labor Relations Board, in connection with studies of the extent of collective bargaining following certain types of cases handled by the Board. For a description of these studies see Eighth Annual Report of the National Labor Relations Board, 1943, pp. 68–73.

[2] Only those cases in which the Circuit Court of Appeals decree was entered prior to January 1, 1944, are included.

II. Cases in which contract was signed after court decree..... 26

A. Contract with union with which employer ordered to bargain still in effect..... 18

1. Original contract..... 7

Burke Machine Tool Co., 133 F. (2d) 618, 621 (C. C. A. 6).

Bussmann Mfg. Co., 111 F. (2d) 783, 788 (C. C. A. 8).

Calumet Steel Div. Borg Warner Corp., 121 F. (2d) 368, 370 (C. C. A. 7).[3]

Dixie Motor Coach Corp., 128 F. (2d) 201, 202 (C. C. A. 5).

Tebel Bottling Co., 129 F. (2d) 250, 254 (C. C. A. 8).

Valley Mould and Iron Corp., 116 F. (2d) 780, 765 (C. C. A. 7).

Windsor Mfg. Co. (Oughton), 118 F. (2d) 498, 498 (C. C. A. 3).[3][4]

2. Renewed contract..... 11

a. Renewed once..... 6

Colorado Fuel & Iron Corp., 121 F. (2d) 165, 175-176 (C. C. A. 10).[5]

Continental Oil Co., 113 F. (2d) 473, 480-481 (C. C. A. 10).[4]

P. Lorillard Co., 314 U. S. 512.

Moltrup Steel Prod. Corp., 121 F. (2d) 612, 618 (C. C. A. 3).[4]

Norristown Box Co., 124 F. (2d) 429 (C. C. A. 3).

Swift & Co. (Neuhoff Packing), 127 F. (2d) 30, 32 (C. C. A. 6).

b. Renewed twice..... 3

Bradford Dyeing Association, 310 U. S. 318, 339-340.[4]

George P. Dilling & Sons Co., 119 F. (2d) 32, 39 (C. C. A. 3).

Sunshine Mining Co., 110 F. (2d) 780 (C. C. A. 9).[4]

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[3] This case had contract as result of W. L. B. action.

[4] This contract has recently expired and indications are that it will soon be renewed.

[5] There are two units involved in this case. In one unit there has not been time for renewal of the contract.

[6] This case had contract continued by W. L. B. action.

II. Cases in which contract was signed, etc.—Continued.
A. Contract with union, etc.—Continued.
2. Renewed contract—Continued.
c. Renewed three times ---------- 1
Kiddie Kover Mfg. Co., 105 F. (2d) 179 (C. C. A. 6).
d. Renewed four times ---------- 1
International Ass'n of Machinists, 311 U. S. 72.
B. Contract with union with which employer ordered to bargain expired; contract with another union still in effect ---------- 2
1. Contract with charging union renewed once ---------- 2
Biles-Coleman Lumber Co., 96 F. (2d) 197, 198 (C. C. A. 9).[7] (Contract with other union renewed twice.)
Chicago Apparatus Co., 116 F. (2d) 753, 758 (C. C. A. 7).[8] (No time for renewal.)
C. Contract with another union only—still in effect. 2
1. Renewed once ---------- 1
Blanton Co., 121 F. (2d) 564, 569 (C. C. A. 8).[9]
2. Renewed twice ---------- 1
M. H. Ritzwoller Co., 114 F. (2d) 432, 437–438 (C. C. A. 7).[9]
D. Contract with union with which employer ordered to bargain—expired ---------- 4
1. Renewed once ---------- 1
Louisville Refining Co., 102 F. (2d) 678 (C. C. A. 6).[10]
2. Not renewed ---------- 3
Reed & Prince Mfg. Co., 118 F. (2d) 874, 880 (C. C. A. 1).

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[7] Renewed contract with charging union expired 7–28–40; on 7–24–40, charging union lost election to other union (petitioner), which obtained a 2-year contract (9–30–40). A consent election was lost (3–12–42) by the charging union (petitioner) to the other union, whose contract was renewed 7–27–42.

[8] Both the charging union—Federation of Architects, Engineers, Chemists and Technicians—and the other union—United Electrical, Radio and Machine Workers—are C. I. O. affiliates.

[9] The members of the charging union changed their affiliation, and shortly after the court decree an election in which the charging union did not participate was won by the other union.

[10] Contract was renewed for period of 4 months. As result of employer's demand for proof of majority, charging union petitioned for election in two successive years and lost both elections. No other union was involved.

II. Cases in which contract was signed, etc.—Continued.
D. Contract with union, etc.—Continued.
2. Not renewed—Continued.
Somerset Shoe Co., 111 F. (2d) 681, 690-691 (C. C. A. 1).
Texarkana Bus Co., 119 F. (2d) 480 (C. C. A. 8).[11]

III. Cases in which no contract was signed after court decree ---- 6
A. Cases in which bargaining did not result in a contract ---- 4
Federbush Co., 121 F. (2d) 954, 956 (C. C. A. 2).
Clinton E. Hobbs Co., 132 F. (2d) 249, 252 (C. C. A. 1).
New Era Die Co., 118 F. (2d) 500, 505 (C. C. A. 3).
Whittier Mills Co., 111 F. (2d) 474, 478 (C. C. A. 5).
B. Cases in which union did not seek to bargain after court decree ---- 2
Riverside Mfg. Co., 119 F. (2d) 302 (C. C. A. 5).
Schreiber Milling & Grain Co., 106 F. (2d) 1008 (C. C. A. 8).[12]

[11] Contract was terminated upon written request of union after it had run for 6 months.

[12] This case differs from the others studied, in that there was a contract after a consent decree, but not after a contempt decree.

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SUPREME COURT OF THE UNITED STATES.

No. 521.—October Term, 1943.

Franks Bros. Company, Petitioner, vs. National Labor Relations Board.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[April 10, 1944.]

Mr. Justice Black delivered the opinion of the Court.

The single question presented is whether the National Labor Relations Board acted within its statutory authority in ordering petitioner to bargain collectively with a union which had lost its majority after petitioner wrongfully had refused to bargain with it.

In June 1941 forty-five of the eighty production and maintenance employees in petitioner's clothing factory designated the Amalgamated Clothing Workers of America as their bargaining representative. Attempts of the Union to negotiate with petitioner proved unsuccessful because of the latter's refusal to bargain, and the Union filed with the Board a petition for an investigation and certification of representatives. A consent election was scheduled for July 25, and notices posted. Before the election was held, petitioner conducted an aggressive campaign against the Union, even to the extent of threatening to close its factory if the Union won the election. Thereupon the Union withdrew its petition for an election, and filed charges with the Board alleging that petitioner had engaged in unfair labor practices.

In the following months various conferences were held and correspondence exchanged between petitioner and the Board in an unsuccessful effort to persuade the petitioner to cease opposition to the Union. Finally on March 2, 1942, the Board issued a complaint against petitioner. Hearings on the complaint were conducted at length, and in October 1942 a final order was entered. The finding of the Board, not here challenged, was that the foregoing conduct of petitioner, together with related conduct un-

necessary to be detailed, constituted unfair labor practices within the meaning of Section 8(1) and (5) of the National Labor Relations Act; 49 Stat. 449, 452, 453; 29 U. S. C. § 158(1) and (5).

In reaching its conclusion as to the appropriate remedy for these unfair practices, the Board considered petitioner's contention that during the seven month interval between the filing of the charges and the issuance of the complaint, thirteen of the Union's original members had been replaced by new employees in the normal course of business. This left the Union with only thirty-two of the eighty-five employees then in the unit which it represented, or less than a majority. But the Board found that the Union's lack of a majority was "not determinative of the remedy to be ordered." Citing many of its previous decisions involving similar situations, the Board concluded that "the only means by which a refusal to bargain can be remedied is an affirmative order requiring the employer to bargain with the Union which represented a majority at the time the unfair labor practice was committed." 44 N. L. R. B. 898, 917. Accordingly, because it deemed such a provision "necessary to effectuate the policies of the Act", the Board included in its order a requirement that petitioner bargain collectively with the Union. The Circuit Court of Appeals upheld the Board, and directed enforcement of the order. 137 F. 2d 989. To consider an alleged inconsistency between the Circuit Court's decision and our decision in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 261-262, we brought the case here for review. 320 U. S. 734.

We think the decision of the Circuit Court correct under the Act and consistent with past decisions of this Court. Little need be added to what has been said on this subject in other cases. Out of its wide experience, the Board many times has expressed the view that the unlawful refusal of an employer to bargain collectively with its employees' chosen representatives disrupts the employees' morale, deters their organizational activities, and discourages their membership in unions. The Board's study of this problem has led it to conclude that, for these reasons, a requirement that union membership be kept intact during delays incident to hearings would result in permitting employers to profit from their own wrongful refusal to bargain. See, *e. g.*, *Matter of Inland Steel Co.*, 9 N. L. R. B. 783, 815-816; *Matter of*

P. Lorillard Company, 16 N. L. R. B. 684, 699-701. One of the chief responsibilities of the Board is to direct such action as will dissipate the unwholesome effects of violations of the Act. See 29 U. S. C. § 160(a) and (c). And, "It is for the Board, not the courts, to determine how the effect of prior unfair labor practices may be expunged." *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82.

That determination the Board has made in this case and in similar cases by adopting a form of remedy which requires that an employer bargain exclusively with the particular union which represented a majority of the employees at the time of the wrongful refusal to bargain despite that union's subsequent failure to retain its majority. The Board might well think that, were it not to adopt this type of remedy, but instead order elections upon every claim that a shift in union membership had occurred during proceedings occasioned by an employer's wrongful refusal to bargain, recalcitrant employers might be able by continued opposition to union membership, indefinitely to postpone performance of their statutory obligation. In the Board's view, procedural delays necessary fairly to determine charges of unfair labor practices might in this way be made the occasion for further procedural delays in connection with repeated requests for elections, thus providing employers a chance to profit from a stubborn refusal to abide by the law. That the Board was within its statutory authority in adopting the remedy which is has adopted to foreclose the probability of such frustrations of the Act seems too plain for anything but statement. See 29 U. S. C. § 160(a) and (c).

Contrary to petitioner's suggestion, this remedy, as embodied in a Board order, does not involve any injustice to employees who may wish to substitute for the particular union some other bargaining agent or arrangement. For a Board order which requires an employer to bargain with a designated union is not intended to fix a permanent bargaining relationship without regard to new situations that may develop. See *Great Southern Trucking Company* v. *National Labor Relations Board*, 139 F. 2d 984, 987. But, as the remedy here in question recognizes, a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed. See *National Labor Relations Board* v.

Appalachian Electric Power Co., 140 F .2d 217, 220-222; *National Labor Relations Board* v. *Botany Worsted Mills*, 133 F. 2d 876, 881-882. After such a reasonable period the Board may, in a proper proceeding and upon a proper showing, take steps in recognition of changed situations which might make appropriate changed bargaining relationships. *Id.*; see 29 U. S. C. § 159(c).

That issuance of the order challenged by petitioner lay within the Board's discretion is settled by our holding in *National Labor Relations Board* v. *P. Lorillard Co.*, 314 U. S. 512, 513. The *Lorillard* case, argues petitioner, is distinguishable because in that case the Court pointed to the fact that, "The Board had considered the effect of a possible shift in membership. . . ." *Id.*, 513. But in this case also the Board considered the change in membership, and in addition relied in part upon the *Lorillard* decision to support its order. We find no possible valid distinction between this and the *Lorillard* case.

Nor is the *Lorillard* decision inconsistent with the earlier holding in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240. In the latter case the Board's order to bargain with the union rested in part on its finding that the company should reinstate ninety-three discharged union members. The Board had not determined in that proceeding, nor did it argue in this Court, that the company should be compelled to bargain with the union if these ninety-three employees were denied reinstatement. After this Court, contrary to the Board's conclusion, held that these employees properly were denied reinstatement, the situation was the same as if the Board had not considered the effect of the change in union membership. Cf. *N. L. R. B.* v. *P. Lorillard Co.*, *supra*.

Affirmed.

The CHIEF JUSTICE took no part in the consideration or decision of this case.